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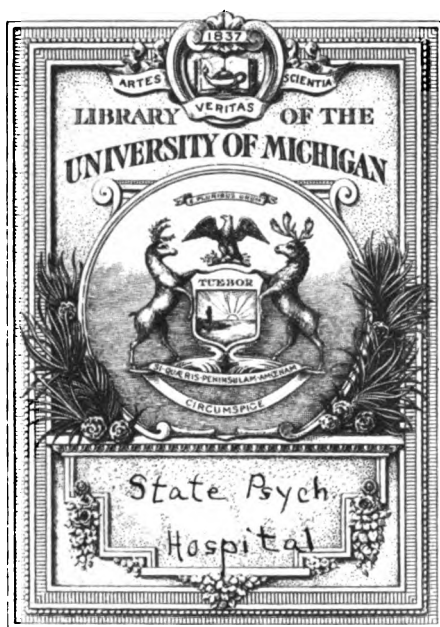
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ON THE DEATH OF M. VAN HAMEL

At the meeting of the Prison Society, which was held at Paris in February, 1917, M. Garcon, Professor at the Law School of the University of Paris, made the following remarks:

"I gladly take this opportunity, which is offered me, to greet the memory of my friend Van Hamel—of that man of science who was also a good man, whom you all knew, for he had many times been present at our meetings, and taken an active part in our discussions.

"M. Van Hamel had been, during his long and brilliant career, Professor at the University of Amsterdam. He was destined to take his place among the most authoritative criminalists of the world. His convictions put him among those reformers whom novelties do not frighten, but who do not allow themselves to be misled by the lure of new things. His sound sense protected him from all exaggeration. He was one of the founders of the International Union of Criminal Law, over the last congress of which, in Copenhagen in 1913, he presided. It is there that I saw him for the last time.

"Age having come on he had given up teaching upon his retirement. But the strength of his spirit could not find repose suitable. Some years ago he had entered political life. He was a Representative in the Chamber of Deputies of Holland, in which place he could still exercise and give free scope to his energy.

"Van Hamel was, I believe, of ancient French origin. His ancestors had left France at the time of the Revocation of the Edict of Nantes. At any rate, he spoke our language with a facility, a warmth and an eloquence which many Frenchmen might have envied him. It was a charm to hear him expound his ideas in a language of admirable purity, but a little archaic because it was of the Grand Century.

"We have never heard him speak more brilliantly and with more emotion than when he received us at the Congress of Amsterdam. He then opened wide for us the door of his hearth, where everything breathes the peace and the joy of family life. This reception has left in the heart of all those who took part in it an unforgettable remembrance.

"We send the expression of our regrets to his son to whom he had the joy of bequeathing the chair of Criminal Law which he had adorned, and who continues a fine tradition. May he be assured that the memory of his father will not be effaced from our hearts. May

she who was the admirable companion of his life permit us to send her with respect the homage of our profound and aching sympathy in the great and irreparable misfortune which has befallen her.

—Translated by Robert Ferrari, New York City.

THE MILITARY COURTS OF PARIS

INCLUDING A COMPARISON OF THE PROCEDURE OF THE MILITARY COURTS OF FRANCE AND OF AMERICA.

ROBERT FERRARI¹

The procedure of the Military Courts of Paris has been rarely described to American readers. The procedure itself is important from the military point of view, and at the present time the Military Courts of Paris are a reflection of the social and military life of the time. A spectator not only sees what the military code punishes, but he also sees glimmerings and sometimes more of social life.

There are three military courts in Paris. Paris is not in the military zone, and the courts of Paris have jurisdiction only over offenses committed outside of that zone. The offenses that may be committed against the military code are numerous and varied, and illustrations of almost every violation of that code came to the attention of the courts of Paris within the time I attended their sessions. There is the first *Conseil de Guerre*—which is the French name for Military Court—the second and the third, all sitting in the *Palais de Justice*—the law courts—of Paris.

The composition of the court is as follows: There are seven judges, one president and six assistants. The presiding officer is a colonel. They act as judges of the facts and of the law. In addition, the president of the court acts as a combination of prosecuting officer and defender. The case that comes before the court has already been investigated by a *Rapporteur*, a person who acts as an investigator and who has collected the facts concerning the alleged crime. This *Rapporteur* makes a report, in which are expounded the facts of the case, the testimony given by the witnesses that have come before him, and his conclusions. It is upon the basis of this report confirmed by the investigation of the Judge Advocate, that a person is charged with a crime. The papers in the case are presented to the judges of the Military Court, to the prosecuting officer—the *Commissaire du Gouvernement*—and to the attorney for the defendant. The president of the tribunal has already read the *dossier*—that is, the case as it comes up from the *Rapporteur*—and is cognizant of all the facts. Having this

¹Member of the New York City Bar, Associate Editor of this Journal.

knowledge he questions the defendant when he comes to the bar.

The French procedure is entirely different from ours. With us, a defendant may not be questioned. He may give testimony if he pleases, but there is no power which can compel him to give testimony. But under the French system a defendant is submitted to examination and cross-examination by the president of the tribunal. All the members of the court may question witnesses, but the president does nearly all the questioning. As a matter of practice, the president is almost always asked whether a certain question may be put. The president then either puts it himself, or turns to the defendant or the witness and asks him to answer. The attorneys have the large right to cross-examine, but they do not avail themselves of that right, to anything like the extent our lawyers do.

The examination by the president is most thorough. He is well acquainted with all the facts of the case, because the *Rapporteur* has gathered and reported the facts completely. So that the questioning of the President is intelligent and difficult to evade. The questioning is, in a large number of cases, not whether the act was committed, because the defendants who come to the bar usually admit their guilt, but whether there are any aggravating or extenuating circumstances.

The doctrine of extenuating circumstances in France is a curious doctrine. In the civil criminal courts the jury has a right—and in the Military Court the judges are the jury—to decide whether the facts set out in the indictment have been proved; and also, if they decide that these facts have been proved, whether there are extenuating circumstances in the case, to mitigate the crime. Extenuating circumstances are adduced in every case that comes before the military and the civil courts of France. Among us, if the facts set out in the indictment are admitted by the defendant, there is nothing else for the court and the jury to do but to convict. But in France admission of guilt of the facts set out in the indictment does not carry along with it the stopping of the trial and the immediate conviction of the defendant. The defendant, if he is declared guilty by a jury, may be declared guilty with extenuating circumstances; and the fact of the existence of extenuating circumstances will reduce the penalty. In the Civil Court, in special cases, the doctrine of extenuating circumstances leads to the acquittal of the defendant, French juries in this case acting as our own juries do in similar instances. Suppose the case of a person who has admitted his guilt so far as the facts of a crime are concerned. In an American court the defendant would be convicted without a trial. But in a French court, in spite of the admission on

the part of the defendant of the commission of the act, there is always a trial, because of the question whether there are any extenuating circumstances in the case. Extenuating circumstances mean any circumstances in the history of the individual which are likely to minimize the enormity of the offense. The term is very elastic, and the defenders make a great deal of this elasticity. The whole history of an individual is gone over and all the facts which may tend to mitigation of the gravity of the offense are brought forward in order to palliate that offense. Now, as a matter of law, extenuating circumstances do not allow of an acquittal; but in some cases the jury decides, counter to the law, and makes the extenuating circumstances sufficient for acquittal. Under the terms of the law, the jury ought, in a case where it is convinced of the existence of the facts charged against a defendant, to convict that defendant, and then, if it believes there are circumstances in his life which mitigate the crime, it ought to add its opinion of the existence of extenuating circumstances. The court, which receives the law from the criminal code ought then to say exactly what is to be done with the convict. But in some cases the jury overrides the law, and decides that the extenuating circumstances refine the crime to nothingness.

The other question involved in a trial in France, after admission of guilt, is that of aggravating circumstances. The facts showing these circumstances are adduced—in the very rare cases when they are presented—by the prosecuting officer. The attorney for the defendant, the president of the court and the prosecuting officer all adduce evidence of extenuating circumstances. In civil courts every case contains evidence adduced to mitigate the punishment. The same is true of the military courts, but aggravating circumstances are infrequent.

The military courts also apply the doctrine of suspension of sentence, and the suspension of the execution of sentence, as the result of a finding of extenuating circumstances. This is called, in France, the "Beranger Law," which bears the name of the senator who introduced the bill for the law into parliament and who by his eloquence convinced the country of the necessity of such a law; or the "Law of Sursis." It is equivalent to our probation laws. An individual convicted by a court, military or civil, may in the discretion of this court, be allowed to go free upon condition of good behavior and be placed under the care of what is equivalent to a probation officer. In France there is a provision for what is called "Surveillance," which is more rigid than our probation officer system.

The *Commissaire du Gouvernement* is equivalent to our Judge Advocate. He does not, as with us, present the case for the government. It is the president who, by his questioning of the defendant, and the other witnesses, presents the case to the jury, composed of himself and six other judges. The *Commissaire* very rarely questions any of the witnesses. His function appears when all the evidence has been brought forth. He then makes a summing-up speech, called the "requisitoire," in which he sets out all the facts, draws the deductions, applies the law and counsels the court what to do. Under our system, we have a conflict between one side and the other, between the prosecutor and the defender. But under the French system, in practice—because in theory both the civil and the military courts of America have prosecuting officers, who are quasi-judicial officers—the district attorney, in the civil court, or the *Commissaire du Gouvernement* in the military court, is an actual, living, operating quasi-judicial officer. He presents not only the case against the defendant, but also the considerations in his favor.

The attorney for the defendant, on the other hand, presents the case only for the side of the prisoner. But the fairness and the dignity of his attitude are worthy of imitation by our practitioners in cities. Usually in the military courts there is very little for him to do, except to speak concerning the extenuating circumstances in the case; and this he does with a great deal of art. He does not try to minimize or whittle away the crime as much as he tries to explain why the crime was committed. He hopes thereby to obtain a conviction with extenuating circumstances, and the application of the law of probation.

After the evidence is all in and the *Commissaire du Gouvernement* and the prisoner's counsel have made their summing-up speeches, the latter always having the last word, the president asks the defendant if he has anything to add to what has been said by his attorney. If he has not, the judges begin their deliberation at once. They retire and the vote is not by secret ballot, but by discussion, and by viva voce voting. There is a plan for the reform of this method of voting. It is said that the junior officers are terrorized by the senior officers into voting as the latter wish them to vote; or at least that the junior officers are induced to vote as the senior officers do. But, as a matter of practice, juniors are always allowed to express their opinions first. This fear of terrorization by superior officers is not well founded. Of course, seniors, and especially the president, may, in all sorts of ways, indicate their opinion, particularly during the course of the trial, and

thus influence their juniors. But as a matter of practice, I doubt that this is an inconvenience and a defect of the French system of military court procedure. It is ridiculous to assume that superior officers would be offended by a difference of opinion on the part of their inferiors. This is not true in the case of the civil judges, and it seems to be preposterous and offensive to think that the military officers are so thin-skinned and so stupid; and actual experience verifies this conclusion. The plan for the reform providing for secret voting has been introduced into the Chamber of Deputies, but I believe there is no possibility of the bill's going through.

The *Commissaire du Gouvernement* has already presented a list of questions in writing, which the judges take into their room to answer. The questions are of the following sort:

Is the defendant guilty?

Are there any extenuating circumstances in the case?

Sometimes the questions are very numerous, running up to fifteen or twenty; but usually they are three or four in number. When the judges have decided, they re-enter the court room. Everybody stands up; there are soldiers with fixed bayonets at the back of the court room, who then present arms. The president of the tribunal salutes; and every one in the court room does the same. He then reads the opinion of the court, beginning—"In the Name of the French People," and continuing with the questions put to and the answers made by the court.

An article² has recently appeared which is, I believe, the first exposition of the present day actual procedure of Courts-Martial of the United States. Theory of itself is nothing. We must see it in action to judge of its efficiency. And we must watch its deviations from practice. It is practice that decides the value of a system. The author criticises the delay and the uselessness of some steps taken. I wish to add my voice to his, and to make in addition the following observations.

The officer who investigates the case in the American procedure is appointed to hold a Summary Court-Martial. If he decides to forward charges, he sends these with "a statement of the substance of the testimony expected from witnesses, both for the prosecution and for the defense, and with other available information as to any probable testimony that may be developed."³

²Virginia Law Review, February, 1918, E. W. Carter.

³Ib., p. 332.

The Summary Court-Martial is evidently appointed for each case, just as the General Court-Martial, as we shall see later on, is. Why there should not be an officer designated to hold Summary Courts-Martial, why he should not be allowed to remain in office a sufficiently long time to learn his business, and why the officer should not, as far as possible, in order that he may learn this business, be relieved of all other military duty,⁴ are questions which must be answered satisfactorily to a long-suffering public, before this patient beast of burden will continue to give its sanction to the wasteful and futile methods of the army in this aspect of its activities.

In France the *Rapporteur* is an expert. He is given a chance now, whatever the situation may have been twenty years ago, when great agitation for reform caused by the Dreyfus trials, took place, to develop skill and power in investigation and in presentation. The recent Bolo case, to give an example, was prepared by a Captain *Rapporteur*, who has for a long time now done nothing else but prepare cases for courts-martial. It is the same with the other two military courts of Paris. Each has an investigator and preparer of the evidence, assigned to that duty, and to nothing else. Likewise, if we may mention this here out of its natural order, for the sake of symmetry, the General Courts-Martial, that is, the trial courts, have assigned to them judge advocates, who devote themselves to the trial of cases, and to nothing else. This is efficiency. We Americans must learn, and this convulsing war makes the need more pressing, indeed vital, to utilize skilled men for skilled work. Democracy cannot work if it is to mean that any one is to be entrusted with any office. In this respect, division of labor or specialization must go farther.

Secondly, if the word "testimony" in the last line of the quotation from Major Carter means "evidence," which I believe the author intends, then the Summary Court-Martial in our country appointed to investigate a case and prepare charges for the General Court-Martial, corresponds almost exactly in function with the French *Rapporteur*. In the civil law in Anglo-American procedure, the prosecuting attorney and the police are the investigating authorities. But the trial court does not receive any evidence before the actual trial in open court. Our judge, as well as the jury, hears the evidence for the first time upon the trial of the action. But in the civil procedure in France, and generally in continental countries, the trial judge, if not the jury, is thor-

⁴"The Judge Advocate is seldom a man who has received any special training in his duties, or usually has not had much trial experience. His court-martial duties are in addition to his other military duties," *Ib.*, p. 333.

oughly familiar with the evidence for and against, to be adduced, or which may be adduced, to the trial court. In the military courts in continental Europe, the procedure is in essence the same as in the civil tribunals.

Our author is driven to admit that in spite of all the delays, vexations and inanities of the procedure in our courts-martial, he knows of no case, in nineteen months of experience as a Judge Advocate, where injustice has been done. And this with a relaxation of rules of evidence, which is inevitable in courts-martial. What becomes then, of our vaunted Anglo-American civil criminal procedure, to which we have bowed in adoration these continuing centuries? What becomes of the shafts, the quips and quirks at the expense of the continental civil criminal procedure? Our rules of evidence, and our procedure before, during and after trial, are the result, none too happy, of our distrust of the jury and of the layman. What a commentary is this distrust upon the eulogiums of the jury. The truth of the matter is that the defendant had to be protected against the bias, the lack of experience, and the stupidity of juries, and judges in their wisdom have rushed to the assistance of prisoners—as well as of prosecutors; of defendants in a civil action in civil law, as well as of complainants in such an action.⁵ But jurors in courts-martial, to quote from Major Carter, are “experienced in handling the kind of men they try.” That seems to be more important than legal rules.

A summary of the extenuating circumstances is sent, with other papers, to the trial court—the General Court-Martial—by the officer exercising command over the Summary Court-Martial, if he believes the case should be tried by General Court-Martial.⁶ The General Court-Martial, has the extenuating circumstances before it, just as the French Court-Martial has, and as the civil court in France and other continental countries has. This procedure in our Courts-Martial is better than that in our civil courts. It saves time: both issues, namely, the facts of the commission of the act alleged to be criminal, and the circumstances that mitigate the act, if it has been committed, are at the same time presented to the court.

There is delay in the organization of the court. The Judge Advocate swears the members of the General Court-Martial, the president of the court in turn swears the Judge Advocate, and the Judge

⁵On the general subject of Anglo-American civil criminal procedure compared to the French, see my article “The procedure in the Cour d’Assises of Paris.” *Columbia Law Review*, January, 1918.

⁶*Va. Law Rev.*, p. 332.

Advocate, again, swears the stenographer. This proceeding is gone over each time a case is to be tried. What a pitiable waste of valuable time! And in the army, too, where we can least afford this drain upon our forces. The Paris courts which I have seen in action use the sensible methods of the civil courts in all civilized countries: They swear the officers of court at the beginning of their functions for all cases that may come before them.

The American court examines the witnesses after the prosecution and defense have finished with them. Not only the president but the other members of the court question.⁷ The author of the article objects to the repetition of questions and of information due to the lack of skill or inattention of the members of the court. In France there is no such waste of time, and confusion of issue. The president does practically all the questioning and cross-questioning. The other members of the court rarely take part; not because they are lacking in attention or competency, but because the examination by the president is so thorough. The American president, ought to be just as thorough, for he has had the dossier, to use a French term, in other words, the case, and has therefore had an opportunity to familiarize himself with the matter.

"Another serious cause of delay in courts-martial is due to the fact that on every legal point raised, for instance, a point involving the admissibility of evidence, the court must be closed, every one cleared out, except the members of the court, a vote taken as to what the ruling should be, the court opened again and its ruling announced."⁸

At this rate, judging from the number of objections made in the ordinary trial in the civil court, the sessions of the courts-martial drag on till judgment day. This is what rules of evidence lead to, when they are unintelligently employed and when attorneys have little sense of responsibility. The rules of evidence, the "Manual for Courts-Martial" tell us,⁹ are for the purpose of doing justice to the prisoner, to the army, and to the state. It would be better to abolish all rules of evidence than to continue the extravagant procedure now observed. After all we have been permitted to see of the continentals of Europe, no one is so puerile as to believe that because they do not employ any rules of evidence, in our sense, they are unjust in their trials. It would be dangerously erratic to believe that justice can be done only

⁷Va. Law Rev., p. 333,

⁸Va. Law Rev., Art. Cit., p. 334.

⁹"A Manual for Courts-Martial." Government Printing Office, Washington, D. C., 1917.

under our Anglo-American procedure with our intricate system of rules, often unjust in theory, and perilous in action; and that during all the years that free proof has been the order of the day in continental civil and military courts, justice has been unseen. On the contrary, my experience of hundreds of cases in courts-martial and in civil courts in France—and I believe France to be typical of the other nations which have her system of free proof, that is, no law of evidence to trammel the coming-out of facts—has convinced me that the result in spite of all the confusion I have criticised in the article above mentioned, is better there, where they are burdened with no system of evidence. The result is better from the point of view of the eliciting of important facts, and from that of the saving of a world of time. Rapidity and justice is the rule, as I have seen these European courts in operation.

Indeed, why any rules at all before such a jury as Major Carter describes. They are “experienced in handling the kind of men they try, understand their psychology, and know the elements of the offenses without instruction?” What other qualifications do we require of judges? Experience of the individual before the bar, and knowledge of the law: are these not sufficient? If they are, then why shackle the judges with incomprehensible rules, difficult of application, at all times, and sometimes unjust in their application. If, as I have said, judges invented rules of evidence to protect litigants and prisoners against the inexperience and the prejudices of juries, the invention is out of date now.

But if we retain the rules of evidence, cannot we be more practical? In the civil courts, whenever more than one judge sit, the president usually decides points of law, including objections to the introduction of evidence. When consultation is needed, it is had on the spot, and a decision reached immediately after short communication, and without the court's being cleared. Why cannot the courts-martial do the same? Is this our vaunted efficiency? Is this an example of our efficiency in this war?

In French courts there may be objections to testimony. In this event, the other side has the right to be heard, and the judges retire to deliberate. But these objections to testimony are so rare that in two hundred cases—one hundred in the military courts and one hundred in the Cour d'Assises—the Civil Criminal Court for the trial of felonies—and other cases in the other courts for the trial of misdemeanors and for violations of ordinances, I saw objections made only once. The objection must be made in writing; but an assistant usually prepares

the "conclusions," as the objections are technically called, and no time is wasted.

After the evidence is in, "the court is closed and a vote taken, beginning with the junior officer in rank, on each specification and charge."¹⁰

The judgment is, therefore, arrived at not by discussion, but by the members casting their votes for or against conviction, upon the closing of court.

This is incomprehensible. What is the purpose of number in the judge's seat? One would believe it is security for the defendant and justice for society. In the civil courts there are sometimes several judges in trial and in appellate courts. But what security is there for the defendant or for the commonwealth if each man is to make up his mind with the help of the evidence adduced and commented upon, and without the great assistance of discussion among themselves. All experienced men know that some judges of a fact—I do not now refer to law judges only but to all to whom questions of fact are submitted for determination—take greater interest in the discussion *en famille* than in formal presentation. And almost all men are aided in thinking straight by a comparison of their views with those of others. Indeed, the very discussion, the heat of the fray, the beating of the hammers of thought and words upon the anvil of the mind, elicit sparks of light which illumine the case as nothing else could do. I discuss the question of the influencing of junior officers by seniors elsewhere in this article. I do not believe that possibility—of some officers being influenced by others—should prevent a discussion.

After the vote has been taken "the court is then opened and the record of service and former convictions is read; the court is then again closed and a sentence voted."¹¹

Our twentieth century fetich, handed down to us from tyrant-ridden times, and preserved intact till this newer day—overconsideration for a prisoner, and under-consideration for society—grips us with claws of a hawk. In ordinary times, we, under our Anglo-American procedure in criminal law, do not enough stand sentinel before the towers of society. We allow the individual to ride rough-shod over elemental forces of nature. We stand aside and allow him to play with us, to cajole us, to mock us, to scorn us. In our impotence, caused by our own stupidity—we call it, to salve our conscience, tenderness and compassion—we lie prone to the assaults of offenders

¹⁰Art. cit. sup. at 334.

¹¹Va. Law Rev., Art. Cit., p. 334.

against law. We must not allow the record of former convictions to go into a trial; oh no! not this. It may prejudice the minds of the jury against the poor devil at the bar. We are much more human than that! Some states have become emancipated—New York, for instance. This state does not allow the introduction during trial of evidence of an arrest, but it does permit the introduction of evidence of a conviction. But the military courts, above all others, to stick to a tradition, hoary with accumulated moss, and moribund in the civil tribunals! This is too much. One can hardly believe it. This is not the treatment we are accustomed to by the military. All experience negatives the strict adherence to rules in military tribunals, no matter how loudly manuals speak in a contrary sense. Even our government manual, so partial to rules of evidence, so solicitous of doing justice as near as possible as the civil tribunals do, makes the discretion of the court-martial the final arbiter of its procedure.

What does this discretion mean? This war has shown, if ever it can be shown, that constitutional safeguards are straw when the supposed interests of the government are endangered—I do not say the interests of the commonwealth. It has shown clearly, forcibly, and ignobly that courts will interpret constitutional provisions against the individual, and in favor of the government then in power, the policies of which may tomorrow change, and which may be supplanted by another government that may demand contrary interpretations which will be kindly and servilely furnished by the courts. There is one name, however, that will never be forgotten so long as people love truth, liberty and justice—who love these qualities even in war time, love them in opposition to the wishes and the stern demands of army or government, love them even when the state is supposedly or actually in peril of destruction by a superior physical power—and that name is Lord Shaw of England. He is always found on the side of a free spirit of inquiry, a large liberal attitude toward the individual, sometimes hard pressed by governments in power, a vigorous opposition to all that is domineering in government. And in general it may be said that English courts have stood the strain well. Would that we could say the same of our own courts. Constitutional safeguards will splinter like dried timber under the pressure of circumstances. We have already seen it in this country. In this country, above all others our exhibition has surprised us, not that we had any illusions concerning our greater liberty and freedom, but that we had no imminent propulsive force driving us to shatter our traditions, to burn our books, and to annihilate our liberal spirit.

To answer directly the question implied in these remarks: Does any one think that this careful guarding of a soldier's rights, if it be guarding, to the extent of requiring no revelation during trial of a previous conviction, will not in practice yield to the imperative necessities of the situation? And this yielding will happen just in those cases where the unalterable fixity of the safeguarding rules, is most categorically demanded.

"The method of arriving at a sentence is for each member of the court to write on a slip of paper a proposed sentence. The sentences thus proposed are voted upon beginning at the lowest sentence proposed."¹²

The argument against voting this kind of sentence is that against voting a judgment of conviction without discussion. But there is more. In the case of a voting for or against conviction, the majority decides against the prisoner. In the case of sentence, however, although externally the majority vote seems to determine the sentence, it is really in some instances a single vote that decides what it is to be. For, each sets down the sentence. Each, we will suppose, has set down a different number. Without discussion, without rhyme or reason, the sentence they agree upon a number, that is, a majority is in favor of that number. Without discussion, whether rhyme or reason, the sentence is decided upon, and it is determined by the original single individual who first suggested the sentence! The final decision may be controlled by one or more votes, less than an original majority, given on the first balloting. We have all denounced the aleatory balloting of juries.

I give the following table, in parallel columns, which shows the procedure in the military courts of France, and of the United States; and I include some comparisons with the civil criminal courts.

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<i>Preliminary Investigation</i>	
Made by a Rapporteur and by a Commissaire du Gouvernement, who collect the facts and determine whether there is sufficient evidence against the defendant to go to trial on. Perform a function similar to that of the juge d'instruction in civil criminal procedure.	Made by a Summary Court-Martial, the equivalent of an inferior Court Magistrate.

Charge

1. Facts and evidence are both set out.

1. Facts only are set out.

¹²Va. Law Rev., Art. Cit., p. 334.

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Service of Charges

Obligatory.

Same.

*Trial**Court—Its Composition*

Seven judges.

Five to thirteen; the latter number is preferable unless there be manifest injury to the service if that number be convened.

Pleas

Pleas in bar and in abatement may be taken advantage of at any time before the completion of the examination by the president of the prisoner. The examination of the latter is obligatory under the law, after the reading of the charge, of the order to try the defendant and of the order convening the court.

The charge and the order convening the court are read. Pleas in bar and in abatement are now in order, and must be taken advantage of at this time to be effective. The examination of witnesses follows.

Other Officers of Court

1. Commissaire du Gouvernement.
2. Counsel for the prisoner.
3. Clerk.

1. Judge Advocate.
2. Counsel for the prisoner.
3. Clerk.

Joint Defendants

Permissible.

Same.

Challenges Against Membership of the Court

Allowable.

Allowable.

Oaths

Obligatory for members of court, judge advocate and witnesses. Court may also hear statements not under oath—à titre de renseignement. No conviction, however, on such statements.

Same. Court may receive statements not under oath. No conviction can be had on such statements unsupported by evidence under oath.

Rules of Evidence

Free proof. Everything admitted, as a rule. The procedure is the same as that in the Civil Criminal Court.

The rules of evidence of the civil courts prevail, *where possible*. This gives our Military Courts wider latitude, even to venturing into the realm of free proof, though this, it is said, is not done in ordinary practice. The President determines the

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procedure by regulation. This regulation may contravene the body of the law of evidence. Our procedure departs more from civil criminal procedure than the French does.

Evidence of Good Character of the Defendant

Allowable always, and without restrictions.

Admissible; though the admission of it subjects the defendant to having evidence of his bad character introduced. See below.

Evidence of Bad Character of the Prisoner

Admissible always, at any time, by the prosecution.

Not admissible by prosecution unless defendant has already adduced evidence of his good character. Exception, where motive, intent or design is to be proved.

Freedom from Self-Incrimination

Theoretically, in the civil courts, the prisoner cannot be compelled to give testimony against himself. Practically, however, if he does not speak, inferences will be drawn against him. He, therefore, always speaks.

In the military courts, examination of the defendant is provided for by law. (See above, *Pleas*.)

In the civil criminal courts the judge instructs the jury not to take into consideration against the defendant his non-appearance on the stand. In theory, the jury does not hold against the defendant his remaining silent. Experience shows, however, that in some cases, if not in many, the jury is troubled by the prisoner's silence and makes him pay for it.

In military courts the silence of the defendant bodes ill for him. The discretion of the court is usually, I should think, directed against the man who does not speak, and will not explain when he might. The military mind is more direct and vigorous than the civil.

Hearsay Evidence

Admitted.

Not admitted. Exceptions: Confessions, admissions against interest, dying declarations, res gestae.

Evidence of Conspirators and Accomplices

Evidence freely admitted for and against a defendant.

Evidence of any conspirators or accomplices admitted against any of

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the others, unless the statement was made after the abandonment of the conspiracy. Evidence in favor of a defendant admitted only if part of the *res gestae*.

Privileged Communications

(a) Between Attorney and Client

Not admitted.

Not admitted.

(b) Between Physician and Patient

Not admitted. In the civil courts the interpretation by the Cour de Cassation—the Supreme Court of France—of Article 378 of the Penal Code makes a crime the revelation, by a physician, of a privileged communication to him by a patient. Other privileged communications are those to notaries, midwives, pharmacists, priests.

Admitted. The rule in the military courts is different from that in the civil courts. But why should not the rule be changed in these? Our procedure in the military courts is more logical, and in harmony with public welfare than the French.

Memoranda

Allowed to refresh recollection, though the French are less partial to this than we. When the witness is present, his free testimony is preferred.

Allowed to refresh memory. We put greater restrictions about the introduction of written testimony than the French and try harder than they to bring the witness before the court. But once there we are more liberal in giving him scope in respect to aids to memory.

Previous Knowledge of Facts of Case by Judge

Judges, especially the president, are familiar with the facts of the case. The dossier has been studied by them.

The judges may become cogniant of the facts of the case.

Witnesses Examined Apart from One Another

The rule is obligatory here. The practice is invariably to prevent any witness from being present at the examination of another witness who is preceding him in the giving of testimony.

The rule is discretionary.

Are Witnesses Kept Apart from One Another While Waiting to Give Their Testimony?

No.

No.

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Order of Proof

I. General Order

1. Reading of charges by the clerk of the court.

2. No opening by prisoner's counsel.

3. Questioning of the defendant and the bringing out of the facts of the case, for and against. This is done by the president of the tribunal. More evidence presented against defendant by witnesses called and otherwise. Rebuttal evidence by defense.

4. Presentation of evidence by the defendant.

5. Rebuttal evidence by prosecution.

6. In this case and in that of rebuttal evidence in steps 3 and 5, the matter may be introduced at any stage of the testimony of a witness, or at any stage of the presentation of any other kind of evidence.

7. Summing up by prosecution.

8. Summing up by prisoner's counsel. Though the government attorney may have the opportunity for rebuttal the defendant always has the last word.

9. Verdict by at least five against two. Junior officers during deliberations asked their opinions first.

1. Reading of charges by judge advocate.

2. Opening of the case by the prisoner's counsel.

3. Presentation of testimony and other evidence by the judge advocate.

4. Presentation of evidence by defendant, after opening. The opening of the defense may also come immediately after that of the prosecution.

5. Rebuttal evidence by prosecution.

6. Rebuttal evidence by defense.

7. Summing up by defense.

8. Summing up by prosecution. The government has the last word.

9. Case to jury, and verdict by majority. In death sentence by two-thirds vote. Junior officers express in practice their opinions first.

This order—1 to 9—is not in the United States, as we know, obligatory. It is the practice, however, except in extraordinary cases, where the judge may allow in the interests of justice the introduction of evidence quite out of its natural order.

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Order of Proof (Continued)

II. Individual Order

1. Examination by the president of the court. The witness is first asked to depose, i. e., give his testimony in his own way unhampered by anyone. After this deposition he is asked questions by the president, rarely by the other judges, and rarely by the government attorney or by prisoner's counsel.

2. Cross-examination is rarely taken advantage of, though the right exists to question witnesses directly.

Cross-examination may take place before direct examination is finished, interruptions during the direct for cross-examination are allowed, and comments upon the evidence adduced, as it is adduced, are permissible to the attorneys, the judges and the prisoner.

3 and 4. Rebuttal allowed at any stage of the examination or cross-examination of witnesses.

1. Examination of witnesses by question and answer by prosecuting attorney, or defense.

2. Cross-examination by prisoner's counsel, or by prosecution.

3. Rebuttal by government or defense.

4. Rebuttal by defense or government.

Method of Giving Evidence by Witnesses

By deposition. The witness is to be free and untrammelled to express himself on the case. He may give not only facts, but opinions on these facts.

By question and answer. Facts only, and, except in a few well-defined cases, opinions.

Rules of Competency of a Witness

More strict in France than in our country. For instance, the following heirs and next of kin of the prisoner are disqualified from being sworn; but they may be heard "à titre de renseignement," that is, in order to give information to the court as a statement, and not as sworn testimony: grandfather, grandmother, father, mother, sons, daughters, husband, wife.

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Contempts

Provision for punishing for. Same.

Records

Provision for keeping. Same.

Speedy Trials

Provisions for. Provided for.

Depositions

Admitted. The trial before the jury is to be with oral proof, that is, testimony of witnesses is to be adduced, as far as possible. The same rule governs our procedure. But both in the military courts and in the civil criminal courts, in practice, written evidence is admitted more freely than it is among us.

Same. More safeguards in their admission here.

Leading Questions

Allowed. Not allowed.

Presumptions of Law

Employed. Same.

Presumptions of Fact

Used. Same.

Ignorance of Law Does Not Excuse

1. Provisions concerning the maxim are here similar to those in the United States.

1. Maxim prevails.

2. Certain circumstances cause mitigation of penalty or excuse of crime.

2. Certain circumstances lead to extenuation, or excuse.

Ignorance of Fact—Does It Sometimes Excuse?

Yes. Yes.

Judicial Notice

Exists in French military law. Exists.

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What Facts to Be Presented to Court?

Aggravating and Extenuating Circumstances

All the facts of the case are to be adduced, not only those that are admitted in a civil criminal trial among us. We present the bare, bald facts of the act. Was the particular act which the penal code stigmatizes as a crime committed by the defendant? That is our question in Anglo-American procedure. But the civil criminal courts of France and the military courts, also, have presented before them, during the trial, not only the simple facts of the act charged as a crime, but all the surrounding circumstances, using these latter two words in their broadest sense, namely, as meaning all circumstances which may throw light upon the act, those of the time of the crime, and those at any other time in the life of the defendant.

In Anglo-American civil practice only the facts of the act charged as a crime are admitted. Those circumstances in the life of the individual which would explain, and aggravate or extenuate the act are not adduced, except by indirection and contrary to the spirit of the law. The jury is to decide upon the commission of the act charged as a crime. The judge is to determine the punishment. In reaching a determination as to the punishment to be inflicted the judge has the right to call for the production of evidence, at least, in extenuation; and this call is not in this case denied, because it is for the benefit of the convict. But ordinary procedure does not reveal the practice on the part of the judge of calling for evidence even in extenuation. The production of such evidence he leaves to the vigilant counsel for the prisoner. In states where the probation system prevails the judge receives under the law, and as of course, the report of the probation officer which assists him in determining the punishment. In France the introduction in the *trial itself* of a case, of evidence in extenuation is obligatory upon the officers of the court. This is true both for the military courts and for the civil criminal courts. Our military court procedure allows the introduction during the trial of aggravating or extenuating circumstances, and it is therefore similar to that of France in its military and civil aspects. In this regard our procedure in courts-martial is more conducive to justice than in our civil criminal courts.

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Appeal

The authority to which the case is brought on appeal is another court made up of five judges. It may modify a finding or a sentence. This is similar to the power of the Appeal Court in misdemeanor cases in the civil criminal law. The latter law is superior to our civil criminal law in this respect. Our appeal courts have no power to change a finding of fact or a sentence, and to order the execution of the sentence as amended. They have power only to affirm or reverse, in which latter case the matter is sent back for a new trial.

There is no such thing as an appeal in our military law, for the trial court is only an advisory body. The appointing authority has power to approve or disapprove, and this includes the power to change a finding of fact, and modify a sentence. In this respect American military law is superior in effectiveness and justice to American civil law. The American "Appellate Court," that is, the "appointing authority," has, however, the power to decrease a sentence, but not to increase it.

Power to Suspend Sentence or the Execution of Sentence

The French trial court has this power. The Beranger law, or probation law, is in force here as in the civil courts. The court is not only empowered to receive evidence in extenuation of the crime alleged, but is directed to do so.

The American trial court has not. The revising authority alone can suspend a sentence or modify it in any way. Exception, where sentence is of death or of dismissal of an officer. The American general court-martial is a recommending body. The French general court-martial—the Conseil de Guerre—is a disposing body.

Evidence Must Be Introduced While Court Is in Session

Rule here is binding. A great deal of the trouble and confusion in the Dreyfus case came from the fact that at the first trial at Rennes the court retired to deliberate and then received information which decided it to convict the defendant.

Binding.

Burden of Proof

On the prosecution. But there is no rule of reasonable doubt. The rule that governs is the same in military courts, and in the civil and criminal branches of the civil law—preponderance of evidence.

Reasonable doubt. In practice there is no difference between the French and American rule for conviction. Our rule has led to an abundance of judicial definition. But what has it led to in the practice of judges with powers of a jury, and with juries? To conviction.

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tion of a defendant whenever the balance of evidence was against him.

Deliberation of Judges

1. Behind closed doors.
2. Juniors in rank vote first.
3. Members are equal.
4. Tie vote means a negative.
5. Five or more must be against the defendant. If he has three votes out of seven he is acquitted.
6. Disclosures prohibited.
7. Viva voce voting obligatory. No secret balloting.
8. The *dossier* may be used. This may not be used by the jury in the civil criminal court.

1. Must be behind closed doors.
2. Voting must begin with juniors in rank.
3. All members are equal.
4. A tie vote is a vote in the negative of any proposition.
5. Convictions and sentences are made by a majority vote, except when the penalty is death, the vote required being then two-thirds.
6. Disclosures of proceedings are prohibited.
7. No provisions for secret balloting or viva voce voting. "Members of a general or special court-martial, in giving their votes, shall begin with the junior in rank."¹³ The practice is to vote secretly.
8. All papers may be used by military and by civil criminal jury.

Sitting With Closed Doors

Allowable, and sometimes done, e. g. in treason, spy cases, generally.

Court-martial authorized to sit with doors closed to the public. But court-martial in this country, it is said by the authoritative "Manual" of the government, "are almost invariably open to the public during the trial."¹⁴ Exception given where the offense was of a "scandalous nature."

Possibilities of Judgment

1. Acquittal.
2. Conviction.
3. Conviction with aggravating circumstances.
4. Conviction with extenuating circumstances.

All possible, except 3.

¹³A Manual for Courts-Martial. Government Printing Office, Washington, D. C., p. 46. The annual is not clear upon the method, but the practice is as stated in the Table.

¹⁴P. 47.

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5. Absolution; that is, acquittal because the act alleged to be a crime is not punishable.

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Contumacy

If a defendant is never arrested or is arrested and evades a civil or a military court for trial, he may be tried in France and in other continental countries, but there are lenient provisions for reopening the case.

Anglo-American procedure knows no such process as contumacy. The prisoner must be before the court in order that he may be tried.

Default

If a defendant does not appear he may be tried by default.

Default is known only to our civil procedure in the civil law, and not to our criminal procedure.

THE PROCEDURE PRELIMINARY TO TRIAL BY COURT-MARTIAL.

The procedure before trial is assimilated in the two countries to that in the civil courts. The commander, however, occupies a unique position. He is the appointing authority of the Court-Martial, of the investigator, and of the indicting body. In the French civil procedure in criminal cases the *Chambre de mise en accusation* is the indicting body, and is equivalent to our grand jury. However, it has no power of appointment of the investigating authority any more than our grand jury has. In France the preliminary investigation is performed by a *juge d'instruction* in the civil law, and in the United States usually by a public prosecutor, sometimes by a magistrate sitting in an inferior court and having final jurisdiction over some misdemeanor cases, and over other cases, especially felonies, having only power to hold the defendant for trial by a superior court. In military procedure in France the Rapporteur, who acts as a *juge d'instruction* investigates, reports, and holds for trial by a court; while in the procedure in our Courts-Martial, the Summary Court-Martial investigates and reports and holds, if this last be necessary, for trial by a higher court. In both cases in military law the investigating authority sends up not only information gathered, but opinions and recommendations. In French civil procedure the investigating body gives not only facts but his opinion on the facts, and his recommendation, which may or may not be accepted by the indicting body. In our civil procedure only facts are sent up by the inferior court. The indicting body receives

information, and also *advice* from the district-attorney, who is also an authority for the gathering of information.

In France, the procedure from the beginning to the trial is as follows: The military or civil police, or a soldier or officer, makes a charge to the commander of the post. The commander sends the charges for investigation to a *Rapporteur*. This officer gathers the facts and sends these with his opinion and recommendation to the *Commissaire du Gouvernement*. This officer examines the *dossier*, and other evidence—he has the power of calling witnesses before him, as well as that of making other investigation—and sends the *dossier* to the commander. The commander appoints a Court-Martial, or sends the charges to a Court-Martial, if there be any permanent one. The trial is then held. In America, the same forces bring charges to the attention of the commander—the appointing authority of a Court-Martial—who sends the charges to a Summary Court-Martial for investigation and opinion. This court then makes a return to the commander, and the latter appoints a General Court-Martial, and sends to it the charges for trial.

The functions of the *Rapporteur* and the *Commissaire* are combined into one officer in our procedure—the Summary Court-Martial. The French system makes for more thorough preliminary investigation before trial; ours for more rapid action. But in most cases the *Commissaire* accepts the findings of the *Rapporteur* and gathers other evidence infrequently.

ILLUSTRATIVE CASES AND COMMENT.

1. A Tunisian had been on leave from the front, where he had distinguished himself for bravery. Not being used to the ways of civilization, and not understanding the French language, he got into trouble, and was now charged with having committed the crime of resistance to authority in the person of a *gendarme*, and of violence and rebellion. The Tunisian came into court, his head all bandaged up, presenting a pitiable spectacle. He was pale from wounds and from fright. The president questioned. The prisoner did not seem to be able to make head or tail of what the president was saying. The facts gradually came out: The defendant and a few of his Tunisian friends on leave from the front were walking in the streets of Paris. Some hooligans jeered at him, and threw his hat into the gutter. The Tunisian's blood was stirred, and he struck. While the fight was in progress, some policemen in civilian dress appeared. The combatants

were told to stop fighting, but there was no discontinuance of the conflict. In a little while, a *gendarme* in uniform came. In spite of the fact that he ordered the men to stop, the Tunisian continued to beat his opponents. The *gendarme* attempted to arrest the Tunisian, but the latter used hands and feet to prevent the arrest.

Here was an interesting case for the application of the doctrine of extenuating circumstances, and of the law of sursis. There was no question that the Tunisian had resisted authority. But the attorney for the defendant argued that he was a stranger in a strange land, that the customs of the Tunisians were different from the customs of the Parisians; that he did not recognize authority in civilian dress; that, even upon the appearance of the uniformed *gendarme*, the defendant did not know he had authority simply by the fact of his uniform; that he could not understand French; that the provocation had been great, and that his client's blood had been so stirred that his ire had not been able to subside immediately upon the coming of the officer; and especially that he had fought valiantly at the front and had received the *Croix de Guerre*. The judges recognized the services of the Tunisian to France, but thought that discipline and authority had to be respected. They convicted the defendant, sentenced him to one month in prison, but applied the law of probation, suspended the execution of the sentence, and allowed him to go free immediately.

2. Three defendants, a soldier in uniform, and a man and his wife. Ever since the beginning of the war civilians had made a business of buying old uniforms from soldiers and making them over and selling them. Although the business of these two people had continued in a flourishing condition they had not been arrested before. The military code makes it a crime to buy or to sell military clothing or military equipment of any sort. The judgment in this case was the following: The soldier was sentenced to imprisonment for three years; the woman for one year and the man for six months. The court decided that there were no extenuating circumstances in the case of the soldier, that there were extenuating circumstances in the case of the woman, and that there were more extenuating circumstances in the case of the man.

3. Threats of death made by a soldier to a woman. The charge was that three soldiers had broken into the private apartment of a woman. One of the soldiers had taken the other two along; going to the apartment because he enjoyed privileges there. Upon their arrival, they had found a great deal of merry-making and boisterous shouting. Several soldiers were in the apartment and our soldiers demanded admission. This was refused. Someone within shot off a revolver,

when the visiting musqueteers broke down the door, burst into the room, and took possession of everything. While the door was being broken down, the several men in the apartment escaped through a back door, with the mistress of the house. The three soldiers sat down to table, took everything there was in the room of an eatable kind, brought down the bottles of wine (which seemed to be very numerous in the household), and established themselves as if they were in their own home.

The court, in spite of the immorality of the woman in the case, was severe upon the soldiers. The court sentenced every one of them to prison, although there was a diminution of the penalty by the application of the doctrine of extenuating circumstances.

4. The following are two cases of desertion. Some of these are real cases of desertion, others are only technically such. A soldier was in Paris on leave, having his glass in a cafe. He made the acquaintance of a Swiss woman who had been married to a Frenchman, and who was now living in Paris. The woman invited him to her home. She was a woman of loose morals. She took a liking to this man because of his youth, and because of her perversity in bringing about the ruin of men. She seemed to take a devilish pleasure in teaching men whose acquaintance she made to drink hard, to smoke opium, and to take cocaine. This man succumbed. He became her lover, and an opium and cocaine fiend. He enjoyed the embraces of this woman for ten months, his family attempting in the meanwhile to tear him away. Finally—the cause of the final break between the woman and the soldier is uncertain, she saying that it was because she would not give him any more money, and he saying that it was because he wanted to give himself up to the military authorities and wanted to resume his position at the front. He presented himself to the authorities and was brought before the military court, charged with desertion. The *Commissaire de Police*, who is equivalent to our precinct captain of police, made a report to the military court concerning the woman. The report is an interesting document, and evokes the literature of romance. I shall, changing the names, set it out here in full:

“Richard Delaroche Trompette, husband of Augusta Jeanne Caroline Schweizer [the woman in the case], who was born on the 14th of December, 1874, at Lucerne, Switzerland, is a man of great fortune. He does not do anything for a living (*il ne fait rien*). The income he receives from his property is very enormous. He is an inveterate opium-smoker. In his apartment in the Rue de Turin there was a complete equipment of opium material, and it is there that he aban-

doned himself to this passion of his, in company with his wife. His wife, however, uses less opium than he. Madam Delaroche Trompette is a former dancer of the Moulin Rouge. She was very well known in this establishment under the *nom de guerre* of 'Jeanne d'Alma.' She is a woman of loose morality, who, by her art, was able to get her husband to marry her. As the wife of this man she has been living with him for eleven years, flaunting her mania and her vice. It is unquestioned that Richard Delaroche Trompette and his wife are opium fiends. The police raided the establishment on the 18th of March, 1916. The soldier in question, Rigetteau, was replaced in the affections of Jeanne d'Alma by another military man. Rigetteau, as the result of his connection with the Delaroche Trompette establishment, and no doubt by reason of the abuse of opium and cocaine, has become physically and morally sick. His family, one of the most honorable families in France, having become cognizant of the situation, endeavored to tear him away from the evil influence of the Delaroche Trompette couple, and to have him sent to Salonica."

The scene in court was dramatic. There was crimination and recrimination. The defendant blamed the Swiss woman. The Swiss woman blamed the soldier. The soldier said that his downfall was due to her. She said that she had nothing to do with his downfall and that he had wheedled a great deal of money out of her under pretense that he loved her. There was an open admission in court of the fact that she had been his mistress, as well as of the fact that she had been a great many other men's mistress. The defendant charged her with being the accomplice and the inducer of the desertion. The woman absolutely denied it. After the testimony of these two had been given, the *Commissaire du Gouvernement* made a strong appeal for the conviction of the defendant, in spite of the fact that he recognized he had probably been misled by the woman, who was a much older person than he, and intimated that a charge would very likely be laid against her as an accomplice. The judges retired for deliberation and came back with a verdict of "guilty," with extenuating circumstances. The woman was afterward charged with being the accomplice of the desertion of Rigetteau, and convicted.

5. A case of desertion of a different sort was "desertion a l'interieur." The defendant was a soldier who was in active service at the front. He was getting twenty-five centimes a day there. If he came to a munition factory in the rear he would get from three to ten francs a day. The president of the tribunal asked whether he had left the front because he would get more money, or because he

was afraid and wanted to be in a secure place. The answer was that he wished to make more money. At the beginning of his sojourn in Paris, he worked for a private individual for fifty centimes a day. This was doing a little better than he was doing at the front and he was in a secure place. But he left his boarding house without paying his board and lodging for fifteen days, and went to another *pension* kept by the sister of the landlady of the *pension* from which he had fled, who had been to her sister's house and seen the defendant. She immediately recognized him, investigated the man, in the efficient way of Madame Frenchwoman, and informed the police of the facts. The court made short shrift of this poor devil.

There is a great deal of riffraff that comes before the military courts which is sent to prison for the good of society. But there are others incarcerated who ought not to be. They ought to be sent to the front. Of course, military discipline is to be maintained. Of course, a person who is insubordinate will make a bad soldier. But after having viewed many people who come before the military courts, I believe that some convictions could well be avoided. For what is the result? A great many are sentenced to prison. They find there board, lodging, clothing, heat and almost all the comforts of life: compared to the service at the front most of these are in heaven. Who are those at the front? Some of the best blood of the nations. The reasons given for imprisonment, including the one that military service is honorable and is to be denied to felons, are fallacious. Because it is honorable to tell the truth, society does not prevent all except honorable men from telling the truth. A good quality may exist in a bad man. Again, the argument to the effect that evil communications corrupt bad manners can be made invalid by doing what is done in all countries—namely, by organizing convict battalions. The last fact is sufficient answer to the plea often heard that military service is too good for bad men.

CRIME AND THE WAR

EDITH ABBOTT¹

Social changes that have accompanied the war, and, more important still, social changes that may be expected to follow the conclusion of the war are the subject of serious consideration both in England and France. In both countries there has been much discussion of the fact that one of the social changes brought about by the war has been a marked decrease in adult crime. It is pointed out, however, that some of the most important causes of the decrease cannot be expected to survive the war. On the other hand, new factors making for lawlessness may be expected to appear with the "great peace."

Some facts as to the decrease of crime may be briefly stated. For a decade preceding the war, there was in England a marked and almost continuous decrease in the number of persons convicted of crime, but this decline has been much more marked during the three war years for which information is available. The convictions per 100,000 of the population had fallen from 586 in 1904-1905 to 369 per 100,000 in 1913-1914, the year before the war began. Since the war the decline has been abrupt, falling to 281 per 100,000 in 1914-1915, to 159 per 100,000 in 1915-1916 and to 118 per 100,000 in 1916-1917. In the report for the year 1915-1916 of the Commissioners of Prisons for England and Wales, three important reasons are assigned for this decrease. These are: "(1) The enlistment of many habitual petty offenders; (2) the restrictive orders issued by the Central Control Board (Liquor Traffic) and those made by the justices and by the military authorities; (3) the great demand for labor, rendering employment easy and well paid, and resulting in ability to pay fines, this latter being greatly aided by the operation of Section 1 of the Criminal Justice Administration Act of 1914."²

With regard to the effect of enlistments, the following points are noted: (1) that the percentage of men forty years and over formed 40 per cent of the total prison population in 1913-1914 and 49 per cent in 1915-1916; (2) that the proportion of able-bodied persons among those committed to prison since the war has decreased. The report says:

¹The University of Chicago and the Chicago School of Civics and Philanthropy.

²Report of the Commissioners of Prisons, 1916 (Cd. 8342), p. 5.

"One of the notable effects of the war on prison population has been that the receptions are now for the most part confined to the physically and mentally weak. The general standard of physique is now much inferior to that of prisoners admitted into prison in normal times, while the percentage of strong, able-bodied men is comparatively small. There is every reason to believe that the country's call for men appealed as strongly to the criminal as to other classes, and if it had been possible to place under scrutiny every case admitted into prison within military age, there is little doubt but that the vast majority of cases would have been found to be physically unfit. A young burglar, one of a gang of five, told the chaplain of a London prison that his four pals had enlisted; two had been killed, and the two others wounded."

The report of the Prison Commissioners also attributed the decrease in crime in some measure to the restrictions placed on the liquor traffic, for military purposes. In the annual report for 1914-1915 the Commissioners had said: "Reports generally from prisons all over the country agree as to the good effect of the early closing of public houses on the prison population. . . . The governors of metropolitan prisons, where restrictive orders had been general in all areas committing to their respective prisons, are unanimous in reporting that the effect of earlier closing has been to reduce the commitments to prison." It is of interest further that recent statistics given out by the Home Office show a marked decrease in convictions for drunkenness beginning in the closing months of 1914.

The comparable figures for 1913, the year before the war began, and 1916, the last year for which statistics are available, are as follows:

CONVICTIONS FOR DRUNKENNESS.

	Males	Females	Total
1913.....	153,112	35,765	188,877
1916.....	62,946	21,245	84,191

It is noteworthy that there is a decrease in both male and female convictions; that the total number of convictions in 1916 is 55 per cent below the number for 1913; and that the number of convictions for 1916 is the lowest number recorded for this offense in fifty years. The decline in the number of women offenders not only on the charge of drunkenness but for all charges is especially interesting because during our Civil War, although there was a decline in convictions for men, crime among women is said to have increased. On the subject of the woman offender and the charge of drunkenness, the English Prison Commissioners comment as follows in their report for 1915:

"It has been frequently stated that since the outbreak of war there has been an increase in drunkenness among women. In this matter it is not safe to rely too much on statistics. When there is more money to

spend on drink, there is more money to pay fines; and the number of convictions may be reduced by the police being absorbed in other duties, and by the instructions issued to them in certain cases to warn offenders instead of charging them. But so far as prison statistics go, they do not support the view that drunkenness among women has increased. As will be seen from a preceding paragraph, the number of women received on conviction for the offense of drunkenness has fallen from 15,149 in 1913-14 to 14,045 in the year under report, or by 7 per cent. At some of the larger prisons, e. g., Birmingham, Durham, Liverpool and Manchester, the decrease has been greater, the reduction being as high as 16 per cent at Liverpool. At the majority of prisons, the numbers are practically the same as for last year. At two prisons only is a substantial increase recorded, viz., at Newcastle and Plymouth, where the numbers have risen from 481 to 566 and from 47 to 74 respectively.

"At Birmingham, for the period since the outbreak of war, a decrease of cases of drunkenness of no less than 40 per cent is recorded as compared with a similar period in the preceding year. The figures for prostitution have fallen from 90 to 28. It is stated that the physical inferiority of persons now coming to prison, noticeable in the men at this prison, is very marked in the case of the women. It is believed that only four women received were in receipt of separation allowances, and three only receiving charitable relief. It is also suggested that part of the decrease may be due to the demand for workers in factories."

The war has been emptying the prisons not only in England and Wales, but in Scotland and in Ireland. A recent report of the Prison Commissioners for Scotland notes that the outbreak of the war led immediately to a marked diminution in the number of convicted offenders; and, again, the first reason assigned for the decline in the number of prisoners is the fact that a large number of those whose habits of life are ordinarily somewhat irregular and undisciplined, enlisted or were called up and placed under discipline in some branch of the army, where they became subject, if they committed minor offenses, to military and not civil discipline; but the report says, "this does by no means account for the large decrease. There has been a quickening of the sense of citizenship that has had its effect among those who at ordinary times pay little regard to the law. . . . It is probable also," the report adds, "that the operation of the Criminal Justice Administration Act, 1914, has been felt in keeping down the number committed to prison, owing to their being given time to pay fines. . . ."⁸ The number of commitments in Scotland for the years preceding the war and the years since the war is as follows:

⁸Annual Report of the Prison Commissioners for Scotland for the year 1914, pp. 7 & 9 (Cd. 7927). There are also interesting and further comments on this subject in the reports for 1915 and 1916, thus the report for 1915 notes that the decrease in commitments "has been steady and continuous through-

COMMITMENTS TO PRISON IN SCOTLAND, 1910-1916.

1910	46,466	1914	43,535
1911	46,636	1915	27,340
1912	48,487	1916	19,946
1913	47,086		

Similarly the last published report of the General Prisons Board for Ireland notes that the daily average prison population for 1915 was the lowest on record and attributes the decrease to the three following causes:

(1) The depletion of the male population; (2) the greater prosperity in agricultural and the higher wages and increased employment in industrial areas; (3) the granting of time for the payment of fines under the Criminal Justice Administration Act, 1914.

It is significant that not only the Irish Prison Commissioners but the Commissioners for England and Wales and for Scotland attribute some part of the decline in the number of prisoners to the effect of the important Criminal Justice Administration Act of 1914.⁴ Section one of this Act adopted recommendations made by the Prison Commissioners as to the fining system. Since 1905 it has been optional with the courts to give a man time to pay his fine, but in 1914 it ceased to be optional and became mandatory. Thus the first section of the Act of 1914 provided that in all cases time must be given for the pay-

out the year, and it cannot be attributed to any one cause. It is known that some of those whose conduct in the past led to their imprisonment have joined His Majesty's forces and done their duty by their country. Others have at least modified their irregular habits and done more and better work than they have been used to do; and many who, by reason of their inability to resist the desire for change of occupation have in the past found themselves drifting out of employment into vice and idleness, have been able to secure variety of employment without intervals of destitution, and to live on their honest earnings without breaking the law. The restrictions on the sale of intoxicating liquor have helped to keep them straight by diminishing the opportunities for procuring it and in increasing its cost." The report adds, "In remarking on the decrease in the number of prisoners received into prison, several Governors attribute the fact partly to the reduced drinking facilities following the orders of the Central Control Board (Liquor Traffic) which came into force in August and September, 1915. The governor of a prison in a large industrial center states that the number of prisoners has also been reduced by employers paying prisoners' fines, in order to get the men back to their work owing to the scarcity of labor." See Report for 1915 (Cd. 8255), pp. 4 & 9. Again the report for 1916 notes that the decrease in commitments is "gradual, steady, and continuous, and is due to the changes in social conditions that have resulted from the war. The floating population that contributed so largely to the filling of prisons has diminished greatly in numbers; some have joined the Army, and others have been absorbed by various industries; the indifferent worker has found employment at wages higher than he could command at ordinary times; and there has been a greater pressure to steady him and fewer opportunities offered him for dissipation. It is easier for him to do well and to earn good wages than is the case in ordinary times, and his temptations to do ill are neither so great nor so many." [Report for 1916 (Cd. 8578), p. 4].

⁴⁴ and 5 George V, c. 58.

ment of fines, and that the time allowed should not be less than seven clear days. If, in special cases, the court is satisfied that no time should be allowed, the reasons of the court for the immediate committal must be stated in the warrant of commitment. Two other points are of importance: (1) when the time fixed for payment has expired, further time may be allowed by the court and payment in installments may be allowed; (2) in imposing a fine, the court is directed to take into account "the means of the offender so far as they appear or are known to the court; and where a fine is imposed, the payment of the court fees and police fees payable in the case up to and including conviction shall not be taken into consideration in fixing the amount of the fine or be imposed in addition to the fine." It is hardly necessary to say that the abolition of fees is a revolutionary step since the court and police fees together often amounted to much more than the fine imposed. Attention should be called to the fact that the Prison Commissioners for Scotland especially commend the provision that the means of the offender should be taken into consideration when fines are imposed. If this were done regularly, one of their reports adds, "it would do away with the abuse which at present often arises from the imposition for certain offenses of fines upon a stereotyped scale, which necessarily press much more hardly upon the very poor than upon those who are better off."⁵

Two further steps toward the abolition of needless imprisonments are: (1) The provision in the 1914 statute which gives the court power to substitute for a sentence of imprisonment, an order that the offender be detained for one day within the precincts of the court; (2) the substitution of "police custody" for imprisonment in case of short sentences; that is, if a sentence of imprisonment does not exceed four days the offender in lieu of imprisonment is to be detained in a "suitable place" certified as such by the Secretary of State.⁶ Com-

⁵Report of 1914, p. 9.

⁶On this point also the Prison Commissioners for Scotland comment favorably, calling attention to the fact that in 1913, there were 1,204 one-day sentences given and 5,214 three-day sentences given, or 6,418 sentences of less than five days. Condemning these short sentences, which it is said cannot possibly have either a deterrent or reformatory effect and which are likely to do harm by giving familiarity with the inside of the prison walls, they commend the new act of 1914, which they say will abolish all these short sentences. This report continues, "This is a step in the direction frequently advocated by the Prison Commissioners, not only in Scotland but in England of abolishing very short sentences. It is, however, legal under this Act to sentence to detention in police cells, when certified as suitable, for periods of not more than four days. It appears to be thought in some quarters that it will be necessary to build detention cells which would be really small prisons under another name, for this purpose, but surely this course would fail to accomplish either

menting on the importance of doing away with short sentences, the English Prison Commissioners, in their report for 1915, make the following emphatic statement: "There is not a single redeeming feature in a short sentence. It carries with it all the social stigma and industrial penalties of imprisonment with no commensurate gain to the offender or to the community. If there still survives in the minds of administrators of justice the obsolete and exploded theory that prison is essentially a place for punishment—and for punishment alone—for the expiation of offenses in dehumanizing, senseless tasks, and arbitrary discipline, truly there could be devised no more diabolical form of punishment than the short sentence oft repeated."⁷

The abolition of the old system of imprisoning people merely because they are poor is an important step in the direction of making the administration of the criminal law more democratic and should be studied with interest here in America, where the last federal census of prisoners showed that in a single day 12,299 persons were found in prison for the sole reason that they were not able to pay their fines. It is true that a few states have adopted the policy of giving poor people time to pay their fines in instalments; but if, as in Illinois, the extension of this privilege is optional with the judges, little good comes of it. Thus in spite of the passage of an "installment fine" law in Illinois in 1915, there were in the year 1916 more than ten thousand persons committed to a single penal institution in Chicago for the non-payment of fines.⁸

the purpose or the intention of the Act, and would be tantamount to continuing the evil of very short sentences under the new name of detention instead of imprisonment. The right course would seem to be to exhaust first other methods of dealing with petty offenders such as probation, or fines within the means of the offender, with time to pay." . . . Report for 1914, p. 8.

⁷Report of the Prison Commissioners (Cd. 7837), p. 18.

⁸The English Prison Commissioners emphasize especially the importance of the Act of 1914 in preventing the development of a criminal class. Their report for 1915 contains this comment on the probable effect of the Act on young first offenders: "Since the beginning of this century, commitments to prison in the case of what are known as juvenile adults, i. e., prisoners between the ages of 16 and 21, have fallen from 12,178 to 3,663. We have, in former reports, expressed the opinion that still more might be done in the direction of saving these young persons from the stigma of imprisonment by liberal and generous use of the alternatives which the law now provides. It is for this reason that we attach great importance to the operation of Section 1 (3) of the Criminal Justice Administration Act, which enables the Court to place any young person of this age under "Supervision" till any fine is paid. Governors have received instructions to report the committal of persons of this age, and to forward such information concerning the case as they may be able to obtain. We shall make it our duty to call the attention of the Secretary of State to any case where, in our opinion, advantage might have been taken of the powers conferred by this Section. Out of 1,973 male juvenile adult prisoners committed to prison this year, sentenced to one month or under, no less

Now the importance of all this at the present time is the fact that every belligerent nation must be prepared for a grave increase in crime after the war and that the obligations upon society were never greater than they are today to see that every effort is made to save men convicted of minor offenses from the demoralization of a prison term.

A recent report of the English Prison Commissioners commends the military record of the men who were, before the outbreak of the war, looked upon as the outcasts of society. Commenting upon the admirable conduct of some of the ex-prisoners serving with the forces, this report at once commends the fine record of former prison inmates as members of the forces and expresses fear lest, after the war, these men drift back into their old ways. "We have received testimony," says their report,⁹ "from many prisons where the authorities, lay and religious, have kept in touch with ex-prisoners now serving in the forces, as to the admirable conduct of many of these men. Recruited as they are from all classes of prisoners, the man fresh from penal servitude, the lad from a Borstal Institution, the petty thief, the habitual drunkard, their country's call has touched a fiber in the hearts of many whose lives hitherto had been shown to be irresponsible to all other calls and motives to honest living and good conduct."

than 69 per cent were first offenders; and 52 per cent were committed in default of payment of fine, and what is still more significant, 23 per cent paid their fine after reception into prison." Report for 1915 (Cd. 7837), p. 16.

"The Borstal Committee of Bristol Prison in their Annual Report, write as follows: 'We anticipate that the Criminal Justice Administration Act, 1914, which contains important provisions, coming into operation on the 1st of September, 1915, relating to juvenile adult offenders, will have a beneficial effect upon that class, and tend eventually to reduce the number of lads committed to prison. We especially welcome those provisions for the supervision of young offenders. The chief feature of the Act seems to suggest that no youth shall be sent to gaol unless it is imperative for his own sake that a sharp lesson be administered. Kindly supervision and encouragement are to meet the offense which would formerly have been punished with a short sentence of imprisonment, and it is expected that as a consequence lads will not be imprisoned except for such serious offenses as will enable the Court to pass a sentence of sufficient length to allow of real reformation of character being effected.' *Ibid.* p. 18.

⁹Report of the Commissioners of Prisons for the year ended March 31, 1916 (Cd. 8342), p. 13. See also the report for 1915 (Cd. 7837) for further comment on this point. An example of their contribution to their country's service is the story relating to an inmate who enlisted early in September last, was promoted to the rank of lance-corporal, and killed in action in April, 1915. One of his officers wrote to his mother as follows: "Lance-Corporal _____ was in my company, and perhaps I had more to do with him than the other officers. No one could wish for a braver or better young soldier than he. If volunteers were asked for—whether to take a patrol out toward the enemy's trenches, or to fix up barbed wire in front of our own lines—he was always one of the first to offer his services. He was shot through the head whilst firing over the parapet and killed instantaneously" (p. 9).

Endorsing the hope that after the war these men may be saved from returning to lives of disorder and crime, the Prison Commissioners submit the following extract from the report of the Visiting Committee of Bristol Prison commending it to "all thoughtful persons to whom the after-effects of the war, especially in the case of those who have been redeemed by it from a life of crime and degradation, must be a matter of deep concern." The report of this committee deals with the fine military record of enlisted men who were once prison inmates, but adds this significant statement as to the future:

"When, however, war is succeeded by peace, there will come a time of trial for those who have never turned their backs to a bodily enemy. With the passing of military discipline our brave fellows will be tempted to forget the hardships and miseries of the trenches in a burst of uncontrolled pleasure and license; and if trade be bad and work difficult to obtain, the transitory lapse may, if not checked, become a step on a downward career. We trust it will be possible for the Young Men's Christian Association, the Church of England Men's Society, and other bodies which are doing such a remarkable work for the troops at home and abroad, to provide for this contingency, and to maintain their hold upon those who have learned to look upon them with affection and respect."¹⁰

The Borstal Association, which has done such good work in assisting discharged first offenders, also calls attention to the danger of a serious outbreak of crime after the war. Thus in one of their recent reports we find this note of warning: "In our vast armies there are thousands of lads living in clothes and on food which are dealt out to all alike, and developing casual habits as to the preservation of their own belongings or respect to those of others. . . . The coming of peace can, therefore, hardly fail to bring a peaceful readjustment of ideas based on these conditions, and a corresponding increase in conflict with laws designed for normal conditions."

In France there is similar anxiety over the possibility of an increase in crime when the war is over, and an article in the *Revue politique et parlementaire* for last April emphasizes the importance of being prepared to meet this increase in criminality that will follow the peace. In this article M. Roux, professor of criminal law in the University of Dijon, comments on the fact that war has emptied the prisons of France and "liquidated the criminality of the past." But grave concern is expressed as to the dangers that may accompany demobilization. Professor Roux points out that for a whole decade after the War of 1870 there was a very great increase in crime. The

¹⁰Quoted in the report of the Commissioners of Prisons, 1916, pp. 13-14.

same phenomenon had been noted after the Revolution of 1848, and it was to combat this dangerous situation that Bonneville de Marsangy worked out his "*Amélioration de la loi criminelle*," which was to be the source of the legislative reforms of the Second Empire.

Professor Roux discusses certain economic factors that will make for crime. It is pointed out that the period of industrial and commercial readjustment and reorganization will proceed slowly and will have a dangerous effect upon those who sleep at night without knowing whether they shall eat on the morrow. Resentment over the luxury of the new parvenu is also suggested as a dangerous factor. There will be a new drift to the cities because the peasants in many districts will have lost their interest in the land, and this change will be dangerous. The importance of a carefully considered plan of demobilization is emphasized, for if the demobilization is not carefully carried out, or if it is carried out too suddenly, there will be laborers without resources in all the villages, and acts of violence, disorder, and pillage will occur. Professor Roux therefore urges that in deciding questions of demobilization the problem of law and order must be considered along with economic questions. Society has certainly taken on new obligations toward those who for these years have so generously given their blood on the battlefields, and it is the duty of society to concern itself with their future.

It is urged also in this interesting discussion of *Criminalité après la guerre* that moral conditions will have to be readjusted. Personal morality, it is said, has deteriorated during the years of war with the breaking-up of homes and the perpetual vision of death, and has brought about a state of moral vertigo; and it is idle to suppose that morality will be, at a bound, restored to its old level with the beginning of peace. Professor Roux suggests that after the war the heroes of the Marne, the Yser, of Verdun and the Somme are going to be very troublesome from the point of view of criminal law. One must admit, he says, that war does not develop the virtues of peace. War is a school of courage and sacrifice. It is not a school that teaches respect for the person or the property of others. The men will come back from these years of war with a new outlook, and he fears the habit they have formed of violent solutions and of acts of force. It may be added that whether we agree with him or not, the discussion of this French criminologist deserves serious consideration.

It is of interest that both in France and in England the fear is expressed that the marked increase in juvenile crime which has developed during the war may be of serious import. War, says Professor

Roux, has for children two great evils: (1) Lack of a father's supervision and (2) employment in adult occupations because of scarcity of manual labor. These young delinquents who are growing up may also swell the criminal population in the early days of peace.¹¹ Already in Great Britain the prison commissioners call attention to a marked increase in the proportion of first offenders. The report of the prison commissioners for Scotland issued on May 3, 1917 complains of the distressingly large numbers of persons committed to prison for the first time. And the report adds, "This, it is to be feared, indicates a considerable tendency to lawlessness on the part of the younger members of the population who have either been exempted from or not yet called up for military service."¹²

In discussing the possible increase in crime at the conclusion of the war, the experience of our own country at the close of the Civil War is of interest. Beginning in 1861 and continuing through the Civil War we had a marked diminution of crime and of the number of prison commitments. Immediately after the establishment of peace, however, there was a great increase in crime and disorder not only in the south, where conditions were abnormal, but throughout the north as well. And a very large proportion of the new offenders in the northern states were the men who had "worn the blue." To some, the large number of soldiers and sailors in prison was a "new occasion for denouncing the war and those who carried it on."¹³

¹¹The increase of juvenile delinquency during the war is a subject of great importance, but it is not possible to discuss it within the limits of this paper. Reference should be made however to the very excellent little book, "The Child and the War," by Cecil Leeson, Secretary of the Howard Association (London), and to the discussions in the *Revue pénitentiaire* for March-April, 1916, p. 187, and especially the number for November-December, 1916, p. 488, p. 500.

¹²Annual Report for 1916 (Cd. 8578), p. 3.

¹³*North American Review*, 1866, p. 408. See also the *North American Review*, October, 1867, pp. 580-581. "A year ago allusion was made in these pages to the rapid filling up of our prisons with men who had seen service in the army or navy. At that time, we are confident, at least two-thirds of all commitments to the state prisons in the loyal states were of this class. . . . If so, there cannot be less than five or six thousand soldiers and sailors who fought for the Union now confined in the state prisons of the Union; to say nothing of the tens of thousands besides, who during the year have been confined in the lesser prisons. These things are arousing the interest of many who have never before felt the importance of reforming the discipline of prisoners." In the same review in 1866 (see pp. 409-410) the new interest in the effect of imprisonment was discussed. People were learning with a new interest that American prisons were far from being successful as institutions of reform. The good prisons "almost ineffective for good, the indifferent tending toward evil, and the bad fearfully developing and generating crime, how can we rest under the thought that they are exercising their most hurtful influence upon thousands of these brave men? And this mode of argument, far more forcible than logical, will, we believe, produce in the minds of many a new interest in prison discipline."

Frequently, however, a deep feeling of pity was aroused by accounts of former soldiers who had been sentenced to the penitentiaries, and as early as 1867 a new movement for prison reform was organized because of the fact that the state prisons were being filled with the soldiers and sailors to whom the nation owed the deepest gratitude. Thus a contemporary writer said: "We cannot look with unconcern upon the thousands of veterans now lying in our prisons though their crimes may have been heinous and their punishment deserved. A man who has lost one arm in the defense of the nation, working with the other at the convict's bench is not an agreeable spectacle, nor do we like to see the comrades of Grant and Sherman, of Foote and Farragut, exchange the blue coat of victory for the prison jacket."

Prison reports issued during the period 1865-70 disagree as to how far the grave increase in crime should be attributed to the effects of the great demobilization. For example, the prison commissioner of Wisconsin, who reported a great influx of discharged soldiers among the men received as convicts in 1866, refused to accept the theory that the war had a demoralizing effect on our people. Thus the commissioner says in his report for that year: "It is my honest conviction, that the war had in the main no demoralizing effect upon those of our volunteers who were men of good habits when they entered the army; they, as a general thing, returned with their morals unimpaired. This I consider the rule, but, of course, there are no rules without exceptions." Discussing the large number of prisoners who had come from the army, he also says: "It will be remembered that no inconsiderable number of these persons were discharged from actual confinement in our jails, before having been tried, for the purpose of entering the military service. Thus it happened, that the number of convicts decreased nearly 100 per cent in this prison, during the war, not because there was less crime but because there were less convictions. On the return of these persons, not having been reformed while in the army, they soon relapsed into their old habits and become now the inmates of our jails and prisons."

On the other hand, the warden and inspectors of the Eastern Penitentiary of Pennsylvania attributed the increase in lawlessness to the disbanding of the army. As early as 1865 the officials of this institution reported an unusually large influx of prisoners during the last three months of that year, and the report called attention to the fact that the men received were in poor physical condition and that nine-tenths of them "had been more or less incapacitated and

demoralized by an apprenticeship to the trade of war. . . . That the disbandment of large bodies of troops should produce the effect of not only greatly increasing the amount of crime, but also the grave character of the offenses committed is a fact so severely felt by the community that it may be freely stated without disparagement to the many thousands who from patriotic and other motives have served faithfully and since the close of the war have returned to their customary peaceful avocations."¹⁴

In the following year the report of the same penitentiary records an increase in numbers said to be "without precedent in the annals of the institution." Three-fourths of the convicts had been "active participants in a struggle, unexampled in modern history," and, the report continued, "by the subsidence of this great national convulsion, this penitentiary, in common with all penal institutions in the country has indirectly received, at least, its own share of shattered mortality."¹⁵

With reference to the large numbers of men "fresh from the excitement and comparative freedom from moral restraint incident to camp life," who had found their way into this penitentiary the report also says: "Many of these freely admit that the inducements to break away from early home restraint while engaged in military life, were too strong for them to resist. These important facts are alluded to for the purpose of enlisting a deeper interest in the moral and social welfare of the homeless and comparatively friendless class of young men who have but recently returned from the army and navy to civil life. A large number of those, above alluded to, have fallen under the ban of the law for the first time, and the crimes of which they were convicted were committed while under the influences of intoxicating drinks."¹⁶

Fortunately the report also notes that the number pardoned during the year was larger than usual and that a very large proportion of the pardons were issued to young men who were there "on first conviction and had just been disbanded from the army; who, falling amongst evil associates on their return, were easily led into crime by the wild and reckless habits there contracted."¹⁷

Another pitiable aspect of the situation was that the discharged soldiers were often more fit for a hospital than for a prison. The report of the state prison commissioner of Wisconsin notes for example

¹⁴*Report for 1865*, p. 91.

¹⁵See *Report of the Eastern Penitentiary for the Year 1866*, pp. 110-111.

¹⁶*Ibid.*, pp. 122-123.

¹⁷*Ibid.*, p. 104.

that "many of the prisoners received who have served in the army were physically in a very lamentable condition, being unfit for any manual labor. . . . Proper medical treatment, however, will soon restore their impaired health, and our sanitary rules and regulations are well calculated to make their cure a permanent one."¹⁸

In the Eastern Penitentiary prisoners who had been in the army and were physically unfit for work were received in the prison as early as 1863, and attention is called more than once to the physical incapacity of the ex-soldiers received after the disbanding of the army in 1865.¹⁹

A further point of interest in the wartime reports of the old Eastern Penitentiary is that as early as 1863 the increase in juvenile offenders is noted and in 1864, commenting upon the general decrease in the number of prisoners during the war, attention is again called to the distressing fact that there had been an increase in young first offenders.

In conclusion, it will do no harm at this time to recall the fact that the relationship between crime and war was a subject of comment several hundred years before our own Civil War led us in America to take notice of it. The old scholar, Erasmus, writing his *Complaint of Peace* four hundred years ago made "the injury done to the morals of the people, and the general good order and discipline of the state . . . a loss," he said, "which neither money, nor territory, nor glory can compensate," one of the points of his complaint. And a contemporary of that ancient day, writing in his *Utopia*, also described the outbreak of lawlessness and crime that inevitably followed the conclusion of a great war. Thus he described the dark days of a new peace: "When they had no war, peace nothing better than war, by reason that their people in war had so . . . gathered boldness to mischief, that their laws were had in contempt, and nothing set by or regarded."

All this seems to have an important lesson for us today, when the country is agreed that no effort shall be spared to make the transition from war to peace as little onerous as possible to the great numbers of young men from whom we are already asking such heavy sacrifices. In France and England there is no blinking the fact that the close of this war, like the close of former wars, will bring great temptations to anti-social conduct. If the soldiers of our gallant armies are, as in 1865-70, merely to exchange the work of the trenches for the work of the prisons, then certainly it will be true that for them "the war will bring no peace but the peace of despair and darkness." The debas-

¹⁸Annual Report of the State Prison Commission, 1866, p. 418.

¹⁹See e. g., Report for 1865, p. 6 and p. 91.

ing effects of imprisonment were officially acknowledged in Great Britain before the war and, by the abolition of the short sentence and the great reduction of imprisonments for inability to pay fines, a great step was taken in the direction of establishing social justice for the weak and the poor. These are elementary provisions needed for the democratization of the laws of most of our American states and should be one of the permanent social reforms to come out of this war that is so often called the war for democracy.

Up to the present time the United States has probably suffered less and sacrificed less during the war than any nation in Europe, neutral or belligerent. But in France and in England, while such heavy costs of war have been and are still being paid, people and governments are busy with plans for the social reconstruction that must come with the peace. England in the midst of the most gigantic war preparations that the world has ever known has found time for an official Committee and Ministry of Reconstruction in order that those who shall have borne the battle may be helped back into civil life without any unnecessary hardships. Great pity, kindness, toleration, and infinite patience will be needed on all sides when the men go back from the excitement of war to beat their bayonets into ploughshares, and adequate plans for reconstruction should be got under way if the new peace is to be worthy of those who have sacrificed their youth to secure it.

A DIAGNOSIS OF DEGENERACY FROM CONDITIONS REVEALED BY A FIELD STUDY OF GREEN LAKE COUNTY (WISCONSIN)¹

HERBERT WHITEHOUSE²

I—AIM AND METHOD OF INVESTIGATION

Whether degeneracy has its origin in a variation, or an infection, is not our purpose to determine. It is sufficient, in effecting a cure, to locate a malady, observe its symptoms, discover and introduce counter-acting forces, and remove the conditions which favor it. So a study has been made of the present state of development, a cross-section, as it were, of degeneracy in Green Lake County, Wisconsin, with an aim to determine its relation to other social diseases, to determine conditions in the constitution of society, the individual or his environment that favor its development, to determine conditions in which it does not flourish, and to suggest or prescribe remedies.

Our method has not been that of an intensive study of individual cases,—there are plenty of institutions where such studies³ can be better made—but, rather, an extensive study has been made of the larger relationships. So the county was divided into districts for comparative purposes coinciding with election districts. These divisions were accessible, because they were units used in the Census, they were convenient and comparable as to population, and besides they furnished a study in city, village, and rural degeneracy.

Second, an endeavor was made to locate each individual commonly recognized as defective: the criminal, the inebriate or the person depraved by drugs, and the dependent in his or her residential district. The following classes of defectives were considered: insane, feeble-minded, epileptic, deaf-mutes, physically deformed, persons affected with phthisis or venereal diseases, and the sexually immoral. However there were so few blind, and there was so much trouble in locating and such imperfections in the returns for the sexually immoral and those affected with venereal disease and phthisis that no classified comparison on these bases was attempted. Fortunately, for the totality of

¹A thesis submitted for the Degree of Master of Arts in the State University, Madison, Wis.

²State University, Madison, Wis.

³See studies by Quetelet, Lombroso, Burr, Pearson, Rosenoff, Goddard, Davenport, and others.

this study, the majority of such cases of which we obtained record have defects which placed them in other classes.

Third, it was determined how many of the criminals, inebriates, dependent poor, and physically defective were defective mentally. The investigation includes only the criminals of the county at present in institutions and those tried for crime during the year, 1912-1913. A longer period was not taken because trustworthy material could not be obtained for a longer time, and because of inevitable limitations on the part of the investigator.

Fourth, the districts were compared with regard to delinquency, dependency and defectiveness:

- a. To bring out the dominant factor through correlation.
- b. To show the influence, if any, of country, village, or city life.
- c. To make prominent by way of contrast especially healthful or diseased districts.

Fifth, a study was made of the more general aspects and conditions of life of the classes studied to discover, if possible, causes of degeneracy inherent in the very constitution and mode of life of the normal individual.

In gathering material, town and county officers, teachers, physicians, pastors and sympathetic friends both inside and outside of the county were interviewed and pressed into service as correspondents and enumerators. Justice dockets were made to tell their stories of crime; the record of the Clerk of the Court gave its quota. Information as to the poor and degenerate was found in the records of the several clerks of the county, city, village and town. Posted lists in the saloons were fertile fields for discovery. The Probate Office gave its grewsome tales of commitments to the home for the feeble-minded, asylums, industrial- and state-schools. Letters were sent and replies received in regard to inmates, from Green Lake County, in each charitable and penal institution in the state. Besides, the State Board of Control gave impetus to the work by kindly interest and aid.

The following form, which was all that could be crowded into the width of a type-written sheet, shows the information that was desired; and, as far as possible, obtained from the enumerators. The quotation following is from the letter of instructions that accompanied the form:

"Degenerates in District No., Town of, Green Lake County, not in any institution.

Married or Single						
Name	Condition	Cause	Age	Nativity	Occupation	Religion
Insane						
Feeble-minded						
Epileptics						
Inebriates and Drug-fiends						
Deaf-mutes						
Sexually Immoral						
Blind						

"I want those in the county who have spells of insanity, but are not violent enough to necessitate placing in an institution. I want those who are said to have 'a screw loose some where.' They belong with the feeble-minded; also include idiots. I mean by inebriates, those who get intoxicated every time they get a chance; by epileptics, those who have had fits; by sexually immoral, prostitutes and parents of children born out of wedlock; by physical deformity, deformity from birth such as club-footedness; by deaf-mutes and blind, those so from birth," etc.

A year's time was given to the collecting and sifting of data. All doubtful cases and cases in which fairly full and accurate information could not be obtained were excluded. However, we do not claim to have exhausted the material nor that we have been able to obtain the utmost in scientific analysis, for, from the nature of the case, such a work cannot be exhaustive either as to material or analysis. But a stage of progress has been reached in which we are confident that the data is fairly accurate and complete.

Green Lake County is not considered to be an especially degenerate and criminal community such as the writer at first supposed it to be. (This supposition was based upon a recent article⁴ in the *Survey* and upon the Course in Degeneracy given in the University of Wisconsin.) On the contrary, Green Lake County is an especially favored district, populated by a superior people, environed in ways conducive to normality, being singularly free from the usually recognized social causes of degeneracy, such as overcrowding, economic pressure, stress of industry, unemployment, etc. So the results are all the more significant in that they indicate more or less of a handicap to society everywhere, and point to deep lying biological causes of degeneration.

⁴E. S. Kite, "Pineys," *Survey*, Vol. 31, pp. 7-13, 38-40.

II—QUANTITATIVE ANALYSIS

Relationship of Delinquency and Defectiveness

Number of Criminals.—A comparison of the number of criminals, residents of the county, confined in penal institutions of the State indicates that Green Lake County is unusually free from crime. It has no prisoners in the State Prison at Waupun. This is from the warden's verified statement of September 4, 1914. He says: "Your county furnishes fewer prisoners than any other county in the State. You will note that neither of the two given are residents of Green Lake County." The Eleventh Biennial Report of the State Board of Control is misleading here.⁵ It lists, at page 253, two for the year 1912 who were residents of the county when the crime was committed. These are the two referred to by the warden, but neither had a permanent residence in the county.

TABLE I
NUMBER OF CRIMINALS IN GREEN LAKE COUNTY

DISTRICT	Total Persons Tried for Crime in Past Two Years	Probable Criminals				
		Convicted Criminals, Residents of the County				
		All Convicted			In In- dustrial School	Con- victed in Past Two Years, but not now Con- fined
		Total Number X	Normal in Men- tality	Feeble- minded or Insane M		
All Districts.....	157	140	70	70	3	137
City of Berlin, Ward 1.....	15	14	6	8	0	14
" " " " 2.....	20	20	12	8	2	18
" " " " 3.....	11	11	6	5	0	11
" " " " 4.....	16	13	6	7	1	12
" " " " 5.....	6	5	1	4	0	5
Village of Green Lake.....	8	5	3	2	0	5
" " Markesan.....	4	4	2	2	0	4
" " Princeton.....	11	11	6	5	0	11
Town of Berlin.....	9	9	5	4	0	9
" " Brooklin.....	2	2	1	1	0	2
" " Green Lake.....	6	6	3	3	0	6
" " Kingston.....	8	6	4	2	0	6
" " Mackford.....	8	8	5	3	0	8
" " Manchester.....	5	3	2	1	0	3
" " Marquette.....	9	5	0	5	0	5
" " Princeton.....	11	10	5	5	0	10
" " Seneca.....	4	4	1	3	0	4
" " St. Marie.....	4	4	2	2	0	4

⁵Eleventh Biennial Report of the State Board of Control of Wisconsin (Madison, 1914).

TABLE II
NUMBER OF INEBRIATES AND PERSONS IN GREEN LAKE COUNTY DEPRAVED BY DRUGS

DISTRICT	All Inebriates and Persons Depraved by Drugs			Tried for Crime	Not Tried for Crime		
	Total Number	Normal in Men- tality	Feeble- minded or Insane		Total Number Y	Normal in Men- tality	Feeble- minded or Insane N
All Districts.....	150	74	76	51	99	50	49
City of Berlin, Ward 1.....	12	2	10	8	4	0	4
" " " " 2.....	13	11	2	9	4	4	0
" " " " 3.....	8	3	5	6	2	1	1
" " " " 4.....	15	5	10	3	12	4	8
" " " " 5.....	5	4	1	0	5	4	1
Village of Green Lake.....	4	3	1	0	4	3	1
" " Markesan.....	8	3	5	2	6	2	4
" " Princeton.....	14	7	7	5	9	3	6
Town of Berlin.....	6	4	2	3	3	3	0
" " Brooklin.....	8	8	0	1	7	7	0
" " Green Lake.....	2	0	2	1	1	0	1
" " Kingston.....	8	4	4	1	7	4	3
" " Mackford.....	6	3	3	4	2	1	1
" " Manchester.....	3	1	2	0	3	1	2
" " Marquette.....	9	1	8	1	8	1	7
" " Princeton.....	22	13	9	5	17	10	7
" " Seneca.....	0	0	0	0	0	0	0
" " St. Marie.....	7	2	5	2	5	2	3

A similar situation obtains for the Reformatory at Green Bay, there being no residents of the county there at present, although there is a non-resident there sentenced from Green Lake County. The report referred to above states⁶ that of the total number of inmates received up to June 30, 1912, Green Lake County furnished but one; fewer than any other county of the State excepting Burnett, which county also furnished one.

The report states⁷, that the average daily number of inmates at the Industrial School for Boys during the year 1912 was 367. Using this number and the population of the State in 1912 for a very rough approximation, there was one boy there for every 6,462 people in the State. This places Green Lake County a little above the average here, there being one boy to every 5,300 people in the county. So, since there were none in the Industrial School for Girls from Green Lake County, Table I shows only three criminals in custody,—these were at Waukesha, and all three were boys from the city of Berlin,—a fact of significance.

⁶*Ibid.*, p. 324.

⁷*Ibid.*, p. 223.

in the past two years, 51 were convicted of drunkenness and disorderly conduct; 35, of assault and battery; 18, of using abusive or obscene language, and 15, of illegal hunting and fishing. Then follow convictions for selling liquor on Sunday and to minors, for desertion, bastardy, larceny, arson, and burglary, proportioned in the order named.

Table I shows that of the total number, 140, convicted of crime Yet this does not tell the whole story of crime. There are the inebriates who are not convicted of crime. There are the sexually immoral, which includes five per cent of the adult women of the city of Berlin, according to the estimate of probably the best authority in that city. This would mean fifty per cent for the men, should the ten to one proportion⁸ hold here. Many of the persons included in this study are affected with venereal disease, which is both a cause and effect of their condition. Besides, sexual excess and self-pollution are wide-spread.

Inebriety as a Cause of Crime.—However, confining ourselves to those forms of delinquency of which we have been able to make a systematic study, it is obvious that drink is by far the major cause of crime. Table II shows that 51, over one-third of the total number of convictions were traced to this cause. When we add to this the number, 99, of inebriates not tried for crime, and, further, when we consider the part drinking has probably played in causing other crimes, such as assault, abusive language, sexual immorality and other minor crimes and misdemeanors, the significance of inebriety as a factor in producing crime takes on importance, especially in the light of such studies as those made by Dr. Rock Sleyster and other students of the subject.⁹ Here are some of Dr. Sleyster's statements.

Of 592 prisoners whose statements were corroborated by outside sources:

217, or 36.8%, were sons of drunken fathers.

239, or 40.4%, were addicted to the use of alcohol before reaching the age of 15.

311, or 52.5%, habitually drank to excess.

57, or 9.6%, were abstainers.

384, or 64.9%, spent their evenings in saloons, cheap shows, or on the streets. Of these three, the saloon was the chief drawing card.¹⁰

Percentage of Criminals and Inebriates Mentally Defective.—Significant as is the fact of the relationship between inebriety and

⁸Estimate of the Chicago Vice Commission.

⁹See Koren, "*Economic Aspects of the Liquor Problem*"; Eugenics Laboratory Memoirs, Bulletins from the Eugenics Record Office, and other studies.

¹⁰Sleyster, Rock, M. D. "John Barleycorn alias Jimmy Valentine," *Everybody's Magazine*, XXX: 798, 799.

crime, it would seem that it is simply a "getting warm" to facts of a deeper import. This study shows that fifty per cent of the criminals were feeble-minded or insane [Table III]. These figures compare favorably with those given in institutional studies. Dr. Sleyster finds that out of 592 prisoners studied, 39.1 per cent were feeble-minded or insane.¹¹ Dr. Brantwaite estimates that sixty-two per cent of inebrity is caused by mental defect or by disease.¹² The divergence in the figures is what would be expected and not adverse to our results as at first they might seem. The feeble-minded are petty criminals rather than violent; besides, they are drained off in other directions in addition to the number sent to the penitentiary. On the other hand, the feeble-minded are very prone to excess in drink, and would be found in preponderance in an institution for inebrates.

Inebriety as a Cause of Defectiveness.—Here are clearly inter-related symptoms of degeneracy. That drunkenness predisposes to crime is certain. It is also evident that feeble-mindedness conduces to the drink habit, but that intemperance results in defectiveness is not so easy to determine. Dr. Brantwaite's studies incline him to the view that feeble-mindedness is the controlling factor in drunkenness, and more recent studies, probably the best we have, those at the Eugenics Laboratory, expressly declare that: "Parental alcoholism is not the source of mental defect in the offspring."¹³ Dr. Sleyster is not so certain and he states his conclusions as follows: "Alcohol and degeneracy are unquestionably the most potent factors in the vice and crime problem, and they usually go hand in hand. Alcohol leads to degeneracy and degeneracy to alcohol. . . . Alcohol is part of a vicious circle and as often an effect as a cause."¹⁴

On the other side, there are those who, with Dr. Saleeby, hold that alcohol is a direct cause of feeble-mindedness and many facts such as Combemale's experiment with pups begotten by an alcoholized dog, and Dr. T. R. MacDougalls' permanent modification of the germ plasm of plants by the solution of certain chemicals, etc., seem to substantiate them in their viewpoint.¹⁵ Some striking examples of parental

¹¹"The Physical Basis of Crime as Observed by a Prison Physician," Bulletin of the American Academy of Medicine, Vol. XIV, No. 6, December, 1913.

¹²Brantwaite, Dr. R. W. Report by *Journal of Inebriety*, winter of 1907, p. 256.

¹³Elderton, Ethel L., "*A First Study of the Influence of Alcoholism on the Physique and Ability of the Offspring.*" (London, 1910.) P. 32.

¹⁴"The Physical Basis of Crime as Observed by a Prison Physician," Bulletin of the American Academy of Medicine, Vol. XIV, No. 6, December, 1913.

¹⁵Saleeby, Caleb Williams, "*Parenthood and Race Culture,*" (New York, 1909), pp. 237 to 284.

TABLE III
RELATION OF CRIMINALITY AND INEBRIETY TO DEFECTIVE MENTALITY IN GREEN LAKE COUNTY

DISTRICT	Percentages of Convicted Criminals			Percentages of Inebriates & those Depraved by Drugs		
	Normal in Mentality	Feeble-minded or Insane	Total	Normal in Mentality	Feeble-minded or Insane	Total
All Districts.....	50.0	50.0	100.0	42.7	57.3	100.0
City of Berlin, Ward 1.....	42.3	57.2	100.0	16.7	83.3	100.0
" " " " 2.....	60.0	40.0	100.0	84.6	15.4	100.0
" " " " 3.....	54.2	45.8	100.0	37.5	62.5	100.0
" " " " 4.....	46.2	53.8	100.0	33.3	66.7	100.0
" " " " 5.....	20.0	80.0	100.0	80.0	20.0	100.0
Village of Green Lake.....	60.0	40.0	100.0	66.7	33.3	100.0
" " Markesan.....	50.0	50.0	100.0	37.5	62.5	100.0
" " Princeton.....	54.2	45.8	100.0	50.0	50.0	100.0
Town of Berlin.....	55.5	44.5	100.0	66.7	33.3	100.0
" " Brooklin.....	50.0	50.0	100.0	100.0	00.0	100.0
" " Green Lake.....	50.0	50.0	100.0	00.0	100.0	100.0
" " Kingston.....	66.7	33.3	100.0	50.0	50.0	100.0
" " Mackford.....	62.5	37.5	100.0	50.0	50.0	100.0
" " Manchester.....	66.7	33.3	100.0	33.3	66.7	100.0
" " Marquette.....	00.0	100.0	100.0	11.1	88.9	100.0
" " Princeton.....	50.0	50.0	100.0	59.1	40.9	100.0
" " Seneca.....	50.0	50.0	100.0	00.0	00.0	100.0
" " St. Marie.....	50.0	50.0	100.0	28.6	71.4	100.0

alcoholism producing both mental and physical defects in the offspring, apparently from no other cause, have come under the observation of the writer and would seem, to some extent, to bear out the latter viewpoint. However this may be, when we consider the amount of intemperance in this country,¹⁶ be the immediate effect ever so little, the cumulative, ultimate effect may be something tremendous in producing degeneracy; when we consider the growing commercialization of the saloon, together with the fact that those already demented furnish a sure and constant patronage, to insure profits we may well seek methods for its elimination. Even should it be granted that alcoholism does not directly cause feeble-mindedness, the fact that this shameful traffic is grounded upon, and derives its support from human frailties and, further, that it constantly endeavors to secure new recruits from the society which supports or tolerates it is an economic factor of such magnitude that the demand for its extermination is justified.

¹⁶In 1840, the per capita consumption of alcohol was 4.17 gallons. In 1906, it was 22.67 gallons. See Bliss, *New Encyclopedia of Social Reform*, p. 716.

RELATION OF POVERTY TO MENTAL DEFECT

Number and Per Cent of Dependent Poor.—However, inebriety and criminality are not the only symptoms of degeneracy and it is probable that more potent causes exist; causes, at least, more immediate than vice and drunkenness. In counting by families, for the family is a better basis for comparison and a better index to the cause of dependency than is the individual, Table IV shows that very many families were receiving public support because of feeble-mindedness. Table V shows that the percentage, 56.3, lacks only one per cent of being as high as that for inebriety. By way of comparison, the 1910 Census gives 63.7 per cent of the total number of paupers in the almshouses in the continental United States as mentally defective.¹⁷

Poverty as a Cause of Defectiveness.—There are other causes, too, which drag down the normal. Widowhood was found to be a cause in 20 of the 48 families. Devine¹⁸ finds this cause in 29 per cent of the 5,000 families which he studied in New York. In the majority of the twenty cases the widows were the wives of immigrants. In six of the families sickness was a cause. In four others there were cripples. Devine finds 27 per cent of poverty due to physical disability other than rheumatism or tuberculosis. But it should be observed that the above causes are reflexive. Disease causes poverty and poverty, disease.

Widowhood and physical disability, together with feeble-mindedness, were found to be the major causes of poverty. Table IV shows that of the families fully supported by the public, 22, or 68.8 per cent, were feeble-minded, while of those partially supported only 5 or 31 per cent, were feeble-minded. A consideration of these results indicates the insidiousness of feeble-mindedness as a force which tends to drag unfortunates to the lowest depths of degradation. A further comparison of these figures with those showing the number of families partially and wholly supported by the public but rated as normal mentally will sustain the view maintained by good authority¹⁹ that poverty itself is a cause of physical and mental deterioration, and *ipso facto*, a cause of poverty.

¹⁷Census, 1910: "*Paupers in Almshouses*," p. 10.

¹⁸Devine, Dr. Edward T. "*Misery and Its Causes*" (New York, 1910), p. 204.

¹⁹Warner, Amos G. "*American Charities*" (New York, 1908), pp. 146. 147.

TABLE IV
NUMBER OF DEPENDENT POOR IN GREEN LAKE COUNTY

DISTRICT	Total Number of Families	Children (b) in State School at Sparta	Families Partly Supported by Public		Families Fully Supported by Public	
			Normal in Men- tality	Feeble- minded	Normal in Men- tality	Feeble- minded
Key Letter.....	Z		O		P	
All Districts.....	48	5	11	5	10	22
City of Berlin, Ward 1.....	3	0	0	0	1	2
" " " " 2.....	3	0	0	0	2	1
" " " " 3.....	2	0	0	0	0	2
" " " " 4.....	4	1	0	0	2	2
" " " " 5.....	1	0	0	0	0	1
Village of Green Lake.....	4	1	1	0	1	2
" " Markesan.....	4	0	0	2	0	2
" " Princeton.....	5	0	2	1	1	1
Town of Berlin.....	3	3	1	0	0	2
" " Brooklin.....	1	0	1	0	0	0
" " Green Lake.....	4	0	2	0	1	1
" " Kingston.....	2	0	1	0	1	0
" " Mackford.....	3	0	1	0	0	2
" " Manchester.....	1	0	0	0	1	0
" " Marquette.....	1	0	0	0	0	1
" " Princeton.....	6	0	2	2	0	2
" " Seneca.....	1	0	0	0	0	1
" " St. Marie.....	0	0	0	0	0	0

(a) Counting by families.

(b) Not added to form Column z, but the family is represented there.

TABLE V
RELATION OF POVERTY TO FEEBLE-MINDEDNESS AMONG FAMILIES RECEIVING PUBLIC SUPPORT

DISTRICT	Percentages		
	Normal in Mentality	Feeble- minded	Total
All Districts.....	43.7	56.3	100.0
City of Berlin, Ward 1.....	33.3	66.7	100.0
" " " " 2.....	66.7	33.3	100.0
" " " " 3.....	00.0	100.0	100.0
" " " " 4.....	50.0	50.0	100.0
" " " " 5.....	00.0	100.0	100.0
Village of Green Lake.....	50.0	50.0	50.0
" " Markesan.....	00.0	100.0	100.0
" " Princeton.....	60.0	40.0	100.0
Town of Berlin.....	33.3	66.7	100.0
" " Brooklin.....	00.0	100.0	100.0
" " Green Lake.....	75.0	25.0	100.0
" " Kingston.....	100.0	00.0	100.0
" " Mackford.....	33.3	66.7	100.0
" " Manchester.....	100.0	00.0	100.0
" " Marquette.....	00.0	100.0	100.0
" " Princeton.....	33.3	66.7	100.0
" " Seneca.....	00.0	100.0	100.0
" " St. Marie.....	00.0	00.0	00.0

Relation of Physical to Mental Defects

Passing to the relations which appear to exist between the feeble-minded and the physically defective, symptomatic relationship tends to disappear and causes in common to arise. For example, of the physically deformed (Table VI) only 2, or 10 per cent, were found to be feeble-minded. In six of the cases (doubtless there are more) it was discovered that the mother was probably in an abnormal condition during gestation. The mother's condition in four of these cases was due to a drunken husband. Dr. Barr gives the abnormal condition of the mother as a cause in from 8 to 14 per cent of the cases of feeble-mindedness.²⁰

Deaf-mutism.—Concerning the deaf-mutes, less than one-third were found to be feeble-minded. But here heredity begins to appear as a cause. The deaf-mutism of at least 6 of the 15 was undoubtedly due to heredity. The condition of two others was said to have been caused by scarlet fever. Edward Allen Fay finds from twenty-four to twenty-six per cent of the offspring of the congenitally deaf are born deaf.²¹

Epilepsy.—One-third of the epileptics were found mentally defective. Of these, more than twice as many were feeble-minded as insane. In at least five of the cases we find traces of direct inheritance of the defect. It is our observation that many of the epileptics are unusually keen of intellect until their mentality has been blunted by the ravages of the disease: the final result may be feeble-mindedness or insanity, more often, insanity.

Another very important cause is the abuse of alcohol. Not only may alcohol itself give rise to what is known as alcoholic epilepsy in an inebriate but it is still more potent as a factor in the causation of epilepsy through alcoholic hereditary degeneration.

Heredity as a Common Cause.—Davenport finds that epilepsy behaves like a unit character in inheritance and follows Mendel's Law.²² Dr. Peterson sums up well the relationship of physical and mental defectiveness in his statement concerning epilepsy. He says: "Epilepsy is one of the equivalents in polymorphic heredity. By this we imply that when the nervous mechanism governing the normal evolution of the body and mind is disarranged, the result is a condition of nervous irritability which manifests itself in the descendants in some

²⁰Barr, Martin W. *"Mental Defectives"* (Philadelphia, 1904), pp. 93, 94.

²¹Fay, Edward Allen. *"The Marriages of the Deaf in America"* (Washington, 1898), pp. 93, 94.

²²Davenport, Charles Benedict and Weeks, David F. *"A First Study of Inheritance in Epilepsy"* (New York, 1911).

TABLE VI
NUMBER OF PERSONS IN GREEN LAKE COUNTY HAVING CONGENITAL PHYSICAL DEFECT

DISTRICT	Epileptics				Physically Deformed			Deaf Mutes		
	All	Normal Mentality	Feeble-minded	Insane	All	Normal Mentality	Feeble-minded	All	Normal Mentality	Feeble-minded
Key Letters.....		A				B			C	
All Districts.....	27	18	7	2	20	18	2	15	11	4
City of Berlin, Ward 1.....	1	1	0	0	3	2	1	1	1	0
" " " " 2.....	4	2	1	1	0	0	0	4	4	0
" " " " 3.....	1	1	0	0	1	1	0	0	0	0
" " " " 4.....	2	2	0	0	0	0	0	0	0	0
" " " " 5.....	1	1	0	0	0	0	0	0	0	0
Village of Green Lake.....	2	2	0	0	3	3	0	0	0	0
" " Markesan.....	2	1	1	0	3	3	0	0	0	0
" " Princeton.....	1	0	1	0	0	0	0	1	0	1
Town of Berlin.....	1	1	0	0	1	1	0	3	2	1
" " Brooklin.....	2	2	0	0	0	0	0	0	0	0
" " Green Lake.....	0	0	0	0	0	0	0	0	0	0
" " Kingston.....	1	1	0	0	2	1	1	4	4	0
" " Mackford.....	4	2	2	0	1	1	0	0	0	0
" " Manchester.....	0	0	0	0	1	1	0	0	0	0
" " Marquette.....	2	1	0	1	3	3	0	1	0	0
" " Princeton.....	3	1	2	0	2	2	0	0	0	0
" " Seneca.....	0	0	0	0	0	0	0	1	0	1
" " St. Marie.....	0	0	0	0	0	0	0	0	0	0

one of many forms. The result may be epilepsy, chorea, neurasthenia, hysteria, somnambulism, migraine, feeble-mindedness, idiocy, insanity, criminal tendencies or simple eccentricity. . . . These are all interchangeable manifestations of an unstable nervous system. . . . We may assume heredity as a cause of epilepsey in at least thirty-three per cent of the cases."²³

The seriousness of heredity as a cause of degeneracy becomes more apparent when we discover that (Table VII) 73, or 0.47 per cent, of the total population of the county are insane; that there are 246, or 1.57 per cent, feeble-minded. However, there are indications that this condition does not hold for the country as a whole; for instance, according to the Census for 1910, there were 187,797 persons, or 0.20 per cent, of the total population of the continental United States insane in hospitals.²⁴ This is an increase over former decades when those outside were included. The per cent of insane in Green Lake County

²³Peterson, Dr. Frederick. "Epileptics." Transactions of the National Association for the Study of Epilepsy (Buffalo, 1901), pp. 14, 15.

²⁴Census, 1910, "Insane and Feeble-Minded in Institutions." p. 16.

is more than twice this. Yet when we consider that there are 44, or 0.28 per cent, of the total population of Green Lake County insane in institutions and that this is exactly the percentage of insane in institutions for the State as a whole,²⁵ our figures become more tenable.

Besides, our total percentage of insane in Green Lake County is very little higher than that for the insane in institutions in some states. For example, the percentage for New York is 0.34 per cent; for Connecticut, it is 0.32 per cent, while for New Mexico, it is as low as 0.07 per cent.²⁶ This indicates that loose supervision and laxness in custodial care is more liable to be the cause of the divergence than any differences in the proportionate number of insane in the various localities. The census enumeration may continue to show an increase in insanity, even though there be no increase in reality.

TABLE VII
NUMBER OF PERSONS IN GREEN LAKE COUNTY HAVING CONGENITAL MENTAL DEFECTS

DISTRICT	Insane			Feeble-minded		
	Total	In Custody	Not in Custody	Total	In Custody	Not in Custody
Key Letters.....	D			E		
All Districts.....	73	44	29	246	21	225
City of Berlin, Ward 1.....	8	7	1	22	0	22
" " " " 2.....	5	5	0	13	2	11
" " " " 3.....	2	1	1	10	0	10
" " " " 4.....	1	0	1	17	2	15
" " " " 5.....	2	1	1	8	1	7
Village of Green Lake.....	2	2	0	8	2	6
" " Markesan.....	3	2	1	19	1	18
" " Princeton.....	7	5	2	26	3	23
Town of Berlin.....	4	4	0	8	2	6
" " Brooklin.....	6	1	5	4	2	2
" " Green Lake.....	0	0	0	5	0	5
" " Kingston.....	7	4	3	13	0	13
" " Mackford.....	10	4	6	18	1	17
" " Manchester.....	5	2	2	10	1	9
" " Marquette.....	3	1	2	29	0	29
" " Princeton.....	1	2	1	21	4	17
" " Seneca.....	1	1	0	4	0	4
" " St. Marie.....	4	2	2	11	0	11

Again, there are 20,731 feeble-minded in institutions in the United States.²⁷ Joseph A. Hill, census expert, estimates that there is a total of 200,000, which is 0.22 per cent of the total population.²⁸ The pro-

²⁵*Ibid.*

²⁶*Ibid.*

²⁷Census, 1910, p. 211.

²⁸*Ibid.*, p. 184.

portion for our county is seven times as great. Nevertheless, let us hope that the census is right. Let us hope that our rubric of "a screw loose somewhere" includes too many to whom the laws of hereditary transmission of degeneracy apply; especially, since it is the higher grade imbeciles who marry and are prolific in offspring. But Goddard says: "Three hundred thousand persons in the United States are feeble-minded. Five hundred thousand persons have not sufficient intelligence to manage their own affairs with ordinary prudence, are unable to compete with their fellows on equal terms, and thereby to earn a livelihood. A still larger number have not sufficient will power to force themselves to do the right thing when it is pointed out to them.

This army of more than five hundred thousand persons furnishes the recruits for the ranks of the criminals, the paupers, the prostitutes, the ne'er-do-wells, and others of our misfits.²⁹

"The Village of a Thousand Souls" is on a double track railroad in a flourishing agricultural section of the Middle West. A casual observer would be likely to exclaim at the scenic beauty of the place, and to declare it an ideal place to raise healthy children.³⁰ This place ought to compare favorably with Green Lake County. But Dr. Gesell finds that 37 out of 220 families are tainted with feeble-mindedness. The 246 of our study represent 181 families. This is 6 per cent of 3,553,³¹ the total number of families in Green Lake County.

Mendelian Law and Defectiveness.—We have seen that Davenport found epilepsy to follow Mendel's Law of Heredity; Rosanoff found that insanity followed the same law;³² and Goddard finds the law applies in the case of feeble-mindedness.³³ In the face of this law, in the light of researches of such men as these, granting that our results are tolerably reasonable, the figures of Tables VIII and IX strike us with alarm. For 366, or 2.35 per cent, of the total population, defective and liable to transmit the defect, is a terrific economic burden and loss, to say nothing of the greater evil of contamination

²⁹Goddard, Henry Herbert. "*The Basis for State Policy*," *Survey*, Vol. 27, p. 1852.

³⁰Gesell, Arnold L. "The Village of a Thousand Souls," *American Magazine*, October 3, 1913, p. 11.

³¹Thirteenth Census of the United States, 1910. "Population," Vol. III, p. 1087.

³²Rosanoff, Aaron Joshua, and Orr, Florence I. "*Heredity of Insanity in the Light of the Mendelian Theory*," p. 228; also, "Conclusions," pp. 259 to 261. Bulletin No. 5, Eugenics Record Office, October, 1911. Cold Spring Harbor, New York.

³³Goddard, Henry Herbert. "The Kallikak Family," pp. 109 to 117. Mac-Millan Company. New York, 1912.

of posterity. Fortunately, many of these are in custody, but many more are not; besides, the taint, recessive in many persons of this generation may crop out in the next.

TABLE VIII
SUMMARY OF THE DELINQUENT DEPENDENT POOR AND DEFECTIVE POPULATION OF GREEN LAKE COUNTY

DISTRICT	Total Population	Normal (a) Population	Total Delinquent, Dependent, and Defective	Total Delinquent	Total Dependent	Defective		
						Not Dependent on Public Charity or Proved Delinquent	Also Dependent on Public Charity or Proved Delinquent	Total
Key Letters.....	V	V-W or U	K+C +Z or W	X+Y or K	Z	A+B or C	M+N +C+P or B	a+b+c+d A
All Districts.....	15601	15094	507	239	48	220	146	366
City of Berlin, Ward 1....	825	784	41	18	3	20	14	34
" " " " 2....	1276	1234	42	24	3	15	9	24
" " " " 3....	940	919	21	13	2	6	8	14
" " " " 4....	683	651	32	25	4	3	17	20
" " " " 5....	912	896	16	10	1	5	6	11
Total.....	4636	4484	152	90	13	49	54	103
Village of Green Lake....	563	540	23	9	4	10	5	15
" " Markesan.....	892	862	30	10	4	16	10	26
" " Princeton.....	1269	1224	45	20	5	20	13	33
Total.....	2724	2626	98	39	13	46	28	74
Town of Berlin.....	779	754	25	12	3	10	6	16
" " Brooklin.....	956	935	21	9	1	11	1	12
" " Green Lake.....	1153	1141	11	7	4	0	5	5
" " Kingston.....	741	705	36	13	2	21	5	26
" " Mackford.....	868	830	38	10	3	25	6	31
" " Manchester.....	997	977	20	6	1	13	3	16
" " Marquette.....	712	675	37	13	1	23	13	36
" " Princeton.....	975	931	44	27	6	11	16	27
" " Seneca.....	484	478	6	4	1	1	4	5
" " St. Marie.....	576	557	19	9	0	10	5	15
Total.....	8241	7984	250	110	22	125	64	189

(a) Normal delinquents are not included.

TABLE IX
PERCENTAGE OF TOTAL POPULATION IN EACH AND ALL DISTRICTS CLASSIFIED AS
DELINQUENT, DEPENDENT, DEFECTIVE OR NORMAL

DISTRICT	Percentage of Total Population, Delinquent, Dependent or Defective				Per- centage Normal	Total (a) Per- centage
	Delin- quent	De- pendent Poor	De- fective	All De- linquent, De- pendent or De- fective		
Key Letter.....	K	Z	A	W	U	
All Districts.....	1.53	0.31	2.35	3.25	96.75	100.00
City of Berlin, Ward 1.....	2.18	0.36	4.12	4.97	95.03	100.00
" " " " 2.....	1.88	0.24	1.88	3.29	96.71	100.00
" " " " 3.....	1.38	0.21	1.48	2.24	97.76	100.00
" " " " 4.....	3.66	0.59	2.93	4.66	95.34	100.00
" " " " 5.....	1.09	0.11	1.21	1.75	98.25	100.00
City of Berlin.....	1.94	0.28	2.22	3.26	96.94	100.00
Village of Green Lake.....	1.60	0.71	2.66	4.08	95.92	100.00
" " Markesan.....	1.12	0.45	2.91	3.37	96.63	100.00
" " Princeton.....	1.58	0.39	2.60	3.55	96.45	100.00
All Villages.....	1.43	0.48	2.57	3.60	96.40	100.00
Town of Berlin.....	1.54	0.39	2.05	3.21	96.79	100.00
" " Brooklin.....	0.94	0.01	1.25	2.18	97.82	100.00
" " Green Lake.....	0.61	0.34	0.43	0.96	99.04	100.00
" " Kingston.....	1.75	0.27	3.51	4.86	95.14	100.00
" " Mackford.....	1.15	0.35	3.57	4.37	95.62	100.00
" " Manchester.....	0.60	0.10	1.60	2.01	97.99	100.00
" " Marquette.....	1.83	0.14	5.06	5.20	94.80	100.00
" " Princeton.....	2.77	0.62	2.77	4.52	95.48	100.00
" " Seneca.....	0.83	0.21	1.03	1.24	98.76	100.00
" " St. Marie.....	1.56	0.00	2.60	3.30	96.70	100.00
All Towns.....	1.33	0.27	2.29	3.37	96.63	100.00

(a) U+W.

TABLE X
CUMULATIVE POPULATION AND PERCENTAGES FOR THE EIGHTEEN DISTRICTS
ARRANGED IN THE REGULAR ORDER.

District	Population	Percentages of Total Population
City of Berlin, Ward 1.....	825	5.3
City of Berlin, Ward 2.....	2,101	12.4
City of Berlin, Ward 3.....	3,041	19.5
City of Berlin, Ward 4.....	3,724	23.9
City of Berlin, Ward 5.....	4,636	29.7
Village of Green Lake.....	5,199	33.3
Village of Markesan.....	6,091	39.0
Village of Princeton.....	7,360	47.2
Town of Berlin.....	8,139	52.1
Town of Brooklin.....	9,095	58.2
Town of Green Lake.....	10,248	65.7
Town of Kingston.....	10,989	70.4
Town of Mackford.....	11,857	76.0
Town of Manchester.....	12,854	82.4
Town of Marquette.....	13,566	87.0
Town of Princeton.....	14,541	93.2
Town of Seneca.....	15,025	96.6
Town of St. Marie.....	15,601	100.0

Fig. II

Graphs Showing the Relation of Dependency
Defectiveness and Delinquency to Each
Other and to the Total Dependency
Defectiveness and Delinquency with
Districts Arranged According to
Increasing Defectiveness

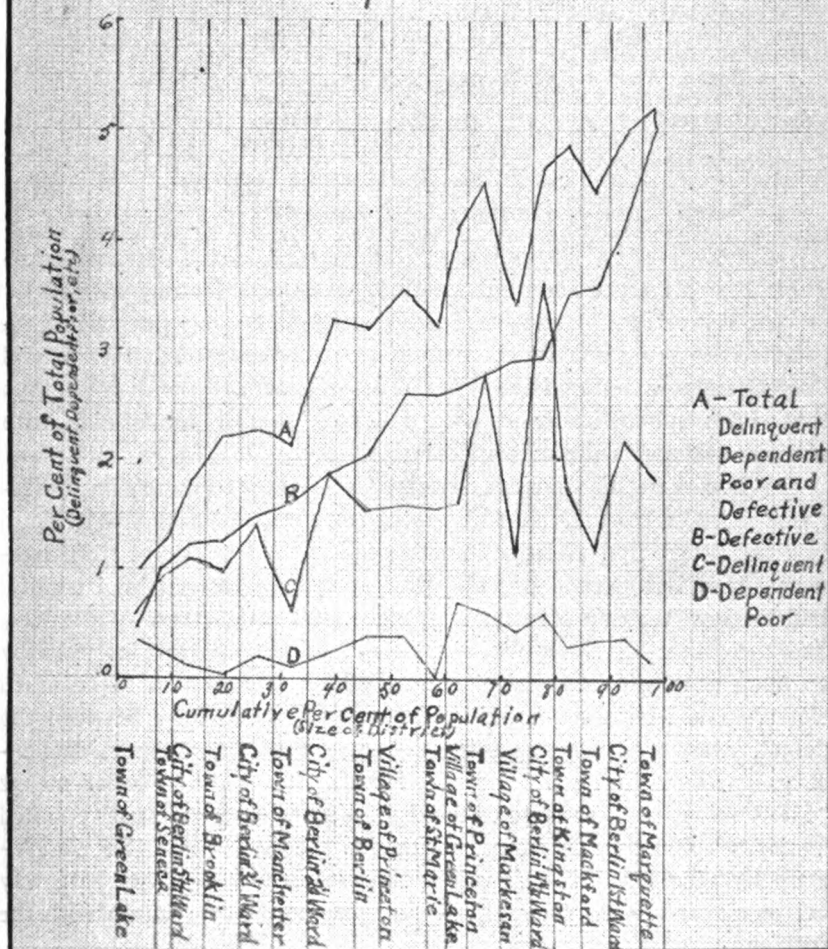


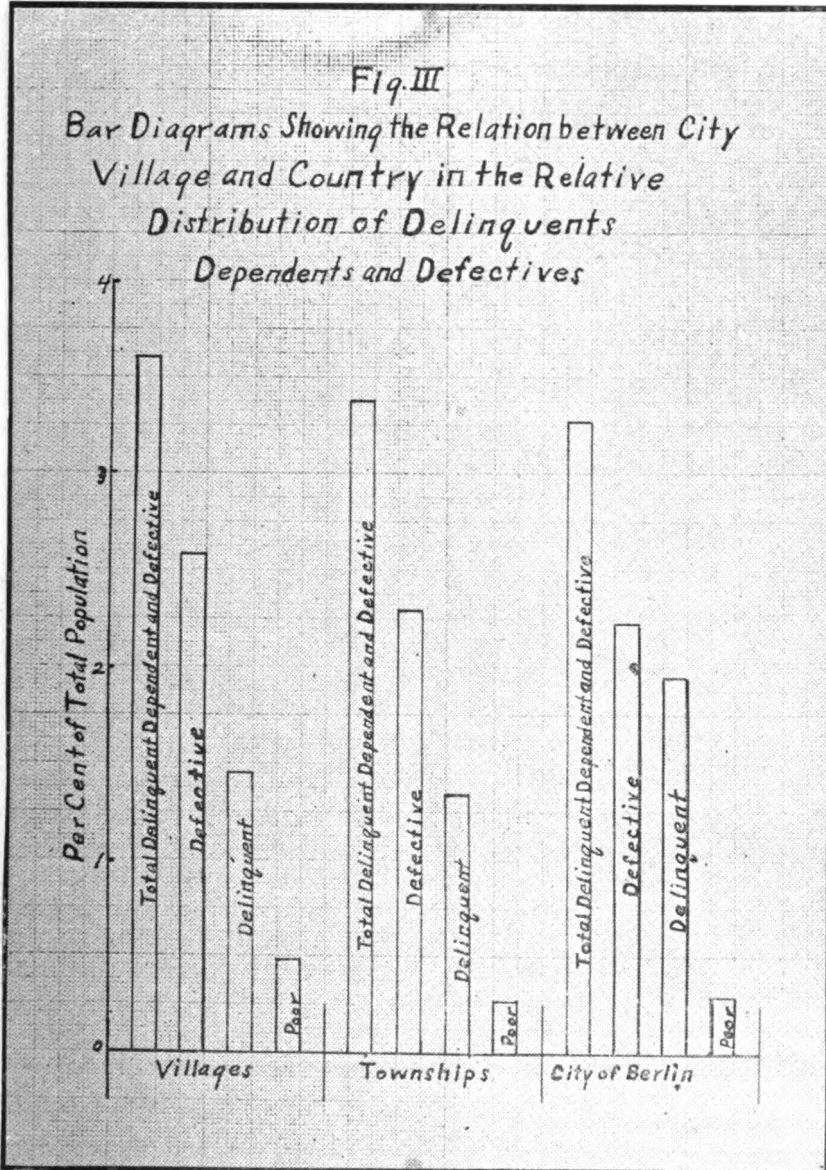
TABLE XI
CUMULATIVE POPULATIVE AND PERCENTAGES FOR THE EIGHTEEN DISTRICTS
ARRANGED IN THE ORDER OF INCREASING DEFECTIVENESS.

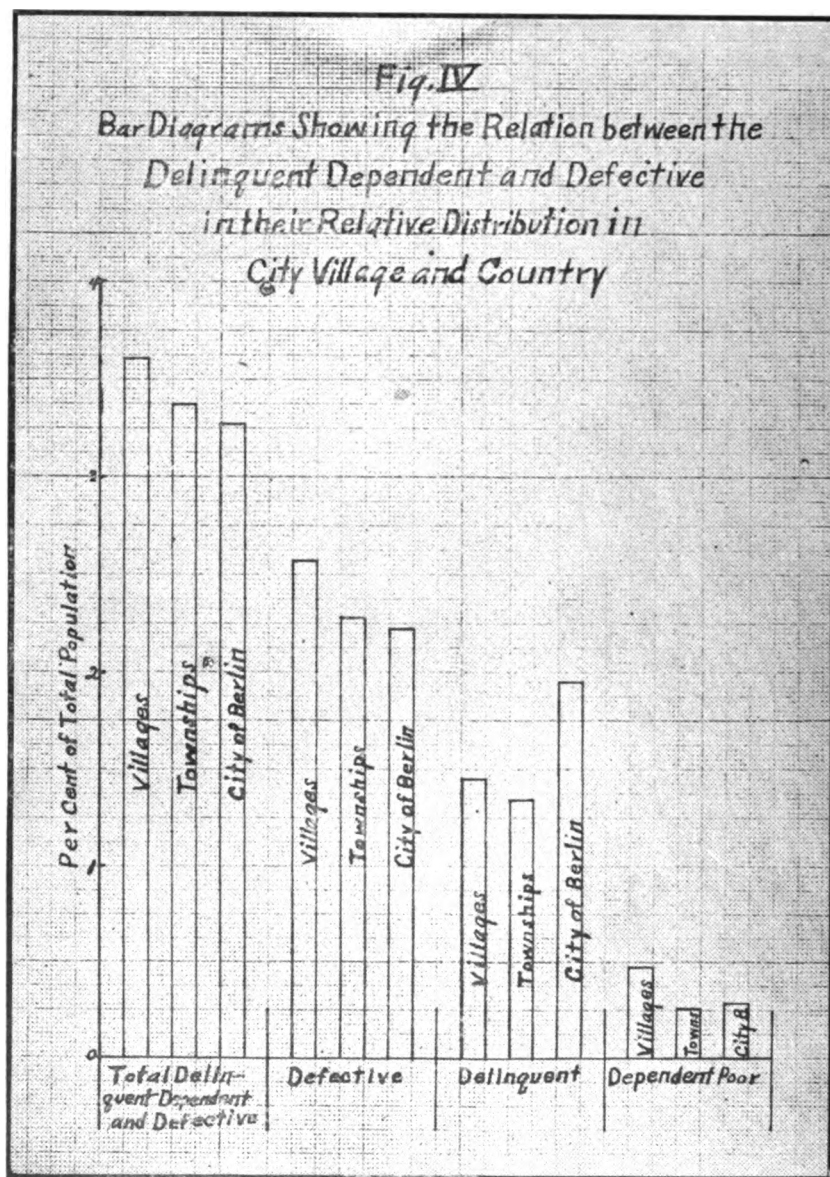
District	Population	Percentages of Total Population
Town of Green Lake.....	1,153	7.5
Town of Seneca.....	1,637	10.6
City of Berlin, Ward 5.....	2,549	16.4
City of Berlin, Ward 3.....	3,489	22.6
Town of Brooklin.....	4,445	28.7
Town of Manchester.....	5,442	35.1
City of Berlin, Ward 2.....	6,718	43.3
Town of Berlin.....	7,497	48.2
Village of Princeton.....	8,766	56.4
Town of St. Marie.....	9,342	60.1
Village of Green Lake.....	9,905	63.7
Town of Princeton.....	10,880	69.9
Village of Markesan.....	11,772	75.3
City of Berlin, Ward 4.....	12,455	79.7
Town of Kingston.....	13,196	84.4
Town of Mackford.....	14,064	90.1
City of Berlin, Ward 1.....	14,889	95.4
Town of Marquette.....	15,601	100.0

DISTRICT COMPARISONS

Correlation of Dependency, Delinquency and Defectiveness.—Table X is merely an accumulation of percentages looking toward the graphic representation of results in Figure I. The only purpose of the graphs is to bring out the correlation of delinquency, dependency, and defectiveness with no other system of arrangement of the districts than that of the alphabetical order used thus far. What is remarkable, with so little system, is the evident correlation.

When these districts are arranged according to increasing defectiveness, as in Table XI and Figure II, the correlation is more evident, and the controlling and dominant factor is clearly that of defectiveness. Had this been a psychological laboratory instead of a county, had the investigation been made by an expert rather than by a novice, had the Binet test been worked instead of general rubrics used by common people, this correlation might have been shown to be much closer. The true amount of defectiveness is somewhere between the defectiveness as given and the total amount of delinquency, dependency, and defectiveness. For it is certain, for want of better means of determination, that some of the delinquent were erroneously counted as normal, and that the same is true for the dependent. So we estimate that the graph line for the defective should be about half way between graph lines A and B, and in much closer correlation with the former.





*Village, City and Country Compared as to Delinquency, Depend-
 ency, and Defectiveness.*—In comparing village, city, and country, Fig-
 ure III, with respect to the relative distribution of delinquents, depend-
 ents, and defectives, we again find that defectiveness is the controlling
 factor in each case, with a regular falling off from defectiveness to

delinquency and dependency. We find that the village takes the lead in defectiveness, then follows the town and then the city.

Figure IV shows the same falling order for defectiveness in passing from village to town and from town to city; and what is shown in the other figures, but is here brought into prominence, is that, although each follows the same order in the falling off from defectiveness, the city takes a shoot ahead of either in the percentage of delinquents and is above the town in the percentage of dependent poor.

We need not look far for the reason for the increase in the delinquent of the city over the village and town. It is, in fact, just what one would expect, for here there is closer policing together with a greater stimulus to crime. So there are not only more crimes committed in proportion to the number of people, but more of the delinquents are subjected to arrest and trial. Again, it is evident that there should be closer correlation between dependent poor and defective in the cases of the city and the village, because in them the means of making a livelihood are more difficult than in the country. Besides, there is more abundant public charity and less neighborliness.

In the percentage of the defective, the village takes the lead over the country because the defective are attracted thither and are more thoroughly sifted out by its life, besides, its influence is more deteriorating and corrupting. The village takes the lead over the city in defectiveness not only because it is more corrupting, but because the city attracts more of the virile and energetic and draws them from a wider region, leaving the defective behind.

Most Healthful Districts Contrasted with the Most Unhealthful.—

Finally, a comparison of the most healthful districts with the most unhealthful brings into relief the influence of an enduring corrupting center. Of all the districts, the two most rural townships contain the lowest percentages of delinquent, dependent, and defective. The township of Green Lake is populous, has a good class of native Americans and contains Green Lake Prairie, probably the best farm land in the State.³⁴ Seneca is sparsely settled by immigrant Poles, and is marshy and swampy.³⁵ There are two possible explanations for the percentages. The defectives may not have drifted to these parts, or it may be that neither district is tributary to a contaminating center. Of the two reasons, the latter seems the more likely.

Again, the township of Marquette and the First Ward of the City of Berlin have the highest percentages. These are the two oldest set-

³⁴"Portrait and Biographical Album of Green Lake, Marquette, and Waushara Counties" (Acme Publishing Company, Chicago, 1890), p. 274.

³⁵*Ibid.*, p. 287.

bled portions of the county.⁸⁶ Both have long been under the sway of the saloon. The village of Marquette, situated in the town of the same name, was the county seat of Marquette County before Green Lake County was organized. It then became the county seat of Green Lake County. The removal of the county seat from Marquette to the village of Green Lake meant Marquette's decrease as a business center, and it is probable that the weaker elements, morally and mentally, lagged behind while the more fit sought larger opportunities. Berlin, on the other hand, owing to too rapid growth, complicated by an excessive number of saloons, has in its first ward an almost typical slum district, overcrowded and unsanitary. We find, therefore, that certain factors which are responsible for the high percentages of delinquency in Marquette and Berlin are absent in the townships of Green Lake and Seneca.

So by way of summary, we may say that it is probably not the town, or village, or city, as such, that corrupts, but an element inherent in each. It has been well said that: "God made the country, man made the city, but the devil made the small town." It is evident that correlation exists between dependency, delinquency, and defectiveness with defectiveness as the controlling factor. It is also evident that the main cause for the presence of defectiveness is heredity with inebriety, vice, and abnormal condition of the mother during gestation as contributing causes.

III—QUALITATIVE ANALYSIS³⁷

Sex and Defectiveness.—Turning from the quantitative study to that of the individual in his environment that we may discover whether there is anything in his constitution or habitual mode of life which renders him susceptible or immune to degeneracy, let us first observe the factor of sex. Table XII shows that there are more than twice as many males as females reckoned as delinquent, a fact not especially striking since many more males than females drink and commit crimes thus induced. Table VIII shows that there are only 18 women delinquent as opposed to 239 men; 11 of these 18 are feeble-minded. Tables IV and VIII show that of 48 dependent poor, 27 are women, 16 of whom are normal. Nevertheless, there are many more defective males than females. Table VIII shows that of 366, the total number of defectives,

⁸⁶*Ibid*, pp. 234-237, 280-282.

³⁷This chapter might perhaps more justly be termed Constitutional and Temperamental Analysis, but the term qualitative is used by way of contrast to the more quantitative analysis of the preceding chapter, although each chapter has both qualitative and quantitative aspects.

TABLE XII
CLASSIFICATION OF THE DELINQUENT, DEPENDENT AND DEFECTIVE POPULATION OF
GREEN LAKE COUNTY WITH RESPECT TO AGE, SEX AND
CONJUGAL CONDITION

DISTRICT	Total Number	Sex		Age			Conjugal Condition			
		Male	Female	Under 20 Years	20 to 60 Years	Above 60 Years	Un-known	Married	Single	Un-known
All Districts.....	507	357	150	108	319	72	8	274	215	8
City of Berlin, Ward 1.....	41	32	9	9	24	8	0	28	13	0
" " " " 2.....	42	34	8	12	25	4	1	23	18	1
" " " " 3.....	21	17	4	5	14	1	1	9	12	0
" " " " 4.....	32	23	9	9	20	3	0	22	8	2
" " " " 5.....	16	11	5	4	10	2	0	11	5	0
Village of Green Lake.....	23	16	7	4	14	5	0	14	6	3
" Markesan.....	30	15	15	4	22	4	0	18	12	0
" Princeton.....	45	28	17	13	26	6	0	18	27	0
Town of Berlin.....	25	22	3	10	10	2	3	10	12	3
" Brooklin.....	21	16	5	5	11	4	1	10	9	2
" Green Lake.....	11	7	4	1	9	1	0	8	3	0
" Kingston.....	36	22	14	3	25	8	0	25	11	0
" Mackford.....	38	23	15	2	31	5	0	24	14	0
" Manchester.....	20	14	6	1	15	4	0	15	5	0
" Marquette.....	37	25	12	16	13	6	2	10	25	2
" Princeton.....	44	36	8	8	31	5	0	17	24	3
" Seneca.....	6	5	1	1	4	1	0	2	2	2
" St. Marie.....	19	11	8	1	15	3	0	10	9	0

TABLE XIII
NATIVITY OF THE DELINQUENT, DEPENDENT AND DEFECTIVE POPULATION OF
GREEN LAKE COUNTY

DISTRICT	Total	Foreign Born or Foreign Parentage								
		Native Born	English	Irish	Scotch	Welsh	German	Polish	Scandinavian	Russian
All Districts.....	507	94	28	34	2	14	200	122	6	3
City of Berlin, Ward 1.....	41	10	2	2	0	2	4	18	1	1
" " " " 2.....	42	9	0	3	1	1	8	18	1	0
" " " " 3.....	21	8	0	1	0	0	3	8	0	1
" " " " 4.....	32	6	0	0	0	1	6	18	0	0
" " " " 5.....	16	1	0	0	0	1	3	10	0	1
Village of Green Lake.....	23	10	4	3	0	0	5	1	0	0
" Markesan.....	30	7	3	1	0	0	18	0	0	1
" Princeton.....	45	3	6	1	0	0	22	13	0	0
Town of Berlin.....	25	4	0	2	0	0	10	8	2	0
" Brooklin.....	21	4	1	2	0	0	10	4	0	0
" Green Lake.....	11	3	2	0	0	0	5	1	0	0
" Kingston.....	36	6	4	3	0	4	16	3	0	0
" Mackford.....	38	12	0	3	0	5	18	0	0	0
" Manchester.....	20	0	1	0	0	0	19	0	0	0
" Marquette.....	37	5	1	6	0	0	25	0	0	0
" Princeton.....	44	4	0	3	1	0	18	16	2	0
" Seneca.....	6	2	1	0	0	0	2	1	0	0
" St. Marie.....	19	0	3	5	0	0	8	3	0	0

127 are females and 239 are males, a ratio of nearly 2 to 1. This would seem to indicate that there are more defective males than females, but it must be remembered that not only may the greater responsibility and nerve strain of a more dynamic life be producing more defectives among men, but the same stress of life brings into prominence the defects of the males while the seclusion in the home acts as a screen for the defects of the females.

Age and Defectiveness.—Considering age, we find that Table XII shows that there are nearly twice as many in the age period from 20 to 60 as are found in the other two combined who are classified as Dependent, Delinquent, or Defective. 170 of the 319 in the middle-aged group are delinquent. This leaves of the total number of delinquents 169, the majority of whom are young. This indicates, as is maintained by some,³⁸ that the young are precocious in crime. Of the middle-aged, 236, or 74 per cent, are defective; of the young, 75, or 69 per cent are defective, and, of the old, 47, or 64 per cent, are defective. There are more defectives in the middle-aged class because in the absence of a psychological test many of the feeble-minded are not discovered until later when, possibly, stress of life brings out the defects. It may take some time for insanity and epilepsy to appear and, as a rule, defectives die in early or middle life. The dependent poor swell the number of old. Of those above 60, 28 are dependent.

Conjugal Condition and Defectiveness.—Of the 274 who are married, 174 are defective. From what has already been said, we see here the propagation of defectiveness in operation. Of the total number of defectives, 97, or 26 per cent, above 20 years of age are single. Of those in Wisconsin, 15 years of age and over, the United States Census gives 32.6 per cent as single.³⁹ Though this is a poor comparison, it indicates that sexual selection does not operate here very successfully through marriage.

Nativity and Defectiveness.—In Green Lake County, the foreign born and those of foreign parentage furnish an undue share of delinquent, dependent, and defective. The Census of 1910 gives 69 per cent of the total population as foreign born or of foreign parentage and 31 per cent as native born.⁴⁰ Table XIII shows that 94, native-born delinquent, dependent, and defective, is 18 per cent of the total num-

³⁸Lombroso-Ferrero, Gena. "*Criminal Man*" (New York and London, 1911), and Henderson, Charles Richmond, "*Penal and Reformatory Institutions*" (New York, 1910), p. 218.

³⁹Thirteenth Census of the United States, 1910. "*Abstract*," p. 160.

⁴⁰*Ibid*, "*Population*," vol. III, p. 1086.

ber; this leaves 82 per cent as foreign-born or of foreign parentage. Of the 94 native-born, 22 are delinquent, 11 are dependent, and 75 are defective. Of the 413 foreign-born or of foreign parentage, 217 are delinquent, 37 are dependent, and 291, defective. Two hundred and ninety-one is 79 per cent of the total defectives; 217 is 91 per cent of the total number of delinquents, and 37 is 77 per cent of the total number of dependent-poor. That the foreign-born and those of foreign parentage should take the lead in delinquency and dependency is not surprising, but contrary to expectation, and for which we offer no explanation, is the lead also taken in the per cent of defectives. Probably we are lacking in facts from which to judge consistently as to the part, if any, that nativity plays in degeneracy. However, there does not seem to be any lead that can be given to any nationality.

From the writer's knowledge of the county, the distribution of defectives by nationality, as represented in Table XIII, forms a quite accurate picture of the distribution of nativities as a whole in the county. The tabular comparison below will help to make this fact concrete. The figures for comparison, the best available, are taken from the classification of foreign-born in the Wisconsin Census for 1905.⁴¹

DELINQUENT, DEPENDENT AND DEFECTIVE COMPARED WITH GENERAL POPULATION
IN RESPECT TO NATIVITY.

	English	Irish	Scotch	Welsh	German	Polish	Scandinavian	Russian	Jewish
Delinquent, Dependent and Defective	28	34	2	14	200	122	90	3	4
Census Figures (Total Foreign Born)	131	105	53	62	2530	532	123	6	*

It should be noted that our figures include both the foreign-born and those of foreign parentage, while those of the Census are only of the foreign-born. The Census gives 12,124 as native-born and 3,714 as foreign-born. Had we in our study been able to make this classification, our results with reference to these unfortunates might have been more satisfactory.

*No figures.

⁴¹Wisconsin Census Report, 1905, Parts I, II, pp. 128, 129.

TABLE XIV
OCCUPATION(a) AND RELIGION(b) OF THE DELINQUENT, DEPENDENT AND DEFECTIVE
POPULATION OF GREEN LAKE COUNTY

DISTRICT	Total Number	Occupation			Religion			
		Skilled Labor	Unskilled Labor	Un- known	Cath- olic	Prot- estant	Jew- ish	Un- known
All Districts	507	20	483	4	158	342	4	3
City of Berlin, Ward 1....	41	3	38	0	21	19	1	0
" " " " 2....	42	4	37	1	25	16	1	0
" " " " 3....	21	0	20	1	10	11	0	0
" " " " 4....	32	1	31	0	21	9	1	1
" " " " 5....	16	0	15	1	11	5	0	0
Village of Green Lake.....	23	3	20	0	2	21	0	0
" " Markesan.....	30	1	29	0	1	28	1	0
" " Princeton.....	45	3	42	0	14	31	0	0
Town of Berlin.....	25	0	25	0	12	13	0	0
" " Brooklin.....	21	0	20	1	6	14	0	1
" " Green Lake.....	11	0	11	0	1	10	0	0
" " Kingston.....	36	2	34	0	5	31	0	0
" " Mackford.....	38	1	37	0	1	37	0	0
" " Manchester.....	20	1	19	0	0	20	0	0
" " Marquette.....	27	1	36	0	1	36	0	0
" " Princeton.....	44	0	44	0	18	26	0	0
" " Seneca.....	6	0	6	0	3	2	0	1
" " Ste. Marie.....	19	0	19	0	6	13	0	0

(a) For children, the occupation of the father was considered.

(b) Their own or that of the family of which they are members.

Religion and Defectiveness.—In regard to religion, there is no other data with which to make comparison or upon which to base a conclusion. The Polish and Irish are quite solidly Catholic. We estimate that at least one-third of the people of the county are of these nativities. As we should expect, religious belief is an unimportant factor in degeneracy.

But when we consider occupation, it is quite obvious that skilled occupations and defectiveness do not go together. Of the 20 unfortunates (Table XIV) classified as "skilled," the majority were either delinquents, epileptics, or deformed. Classifying liquor dealers and farmers with the unskilled, as has been done in this study, and all other proprietors as skilled, a computation from the Census figures of occupation in Green Lake County gives 32 per cent of all employed as skilled laborers.⁴² That there are not more "skilled" among the delinquents, dependents, and defectives is clearly not because there are few skilled workmen in the county; the indications are, though we shall not attempt to substantiate the statement, that the defectives come mostly from the unskilled classes.

⁴²Wisconsin Census Report, 1905, Parts I, II, pp. 377-379.

CONCLUSION

Lacking means of close analysis and comparison, we conclude that the qualitative factors of age, sex, conjugal condition, nativity, religion and employment are unimportant as causes of degeneracy. Although there are indications that any or all of the above factors may exert an influence one way or the other, yet the facts do not sustain us in pointing the finger of accusation at any one or more of these factors, for "it takes more than one robin to make a summer"; furthermore there may be an element of chance in some of the facts that we have presented. On the other hand, the quantitative analysis reveals diseased conditions as causes of degeneracy and these lend themselves to prescription.

IV—REMEDIES

Closer Supervision and Custody.—Since the transmission of mental defects follows the Mendelian Law, so long as the unfit are not restrained from the function of reproduction, so long must degeneracy increase. The obvious remedy is restraint through closer supervision and custody. But this must be more than local in its application. "A little leaven leavens the whole lump." Degeneracy spreads like an epidemic. A few illustrations will make this clear.

The records of the Associated Charities of a city in a county adjoining Green Lake County show that two families in one of which one parent is a native and in the other, both parents are natives of Green Lake County, have of late come under the care of that society. In the following extracts from the records, fictitious names, initials and titles are used where clearness requires a definite designation. We shall call the families X and Y, respectively. The X family consists of Mr. and Mrs. X and a little boy. The Y family consists of Mr. and Mrs. Y and three children.

The X. Family—"June 6, '12: Mrs. M. refers; family consisting of man, wife and one child, living at —; the wife before her marriage worked as a domestic for Mrs. M. She states that the woman, since the birth of her child about six years ago, has been in a peculiar nervous condition; is perhaps slightly unbalanced. Insists on her husband's staying at home constantly to take care of this child because she feels herself unequal to the responsibility. Woman is 38, man is in the fifties. Mrs. M. has known him for many years and speaks well of him. He had always worked outdoors and his health has suffered from confinement. The wife, when she worked for Mrs. M., was very nervous and peculiar, but a good and honest girl. Dr. B. attended her in confinement, but she has not consulted a doctor since; she refused medical care and for a long time refused

to consider going to an institution or hospital, but now says she will be willing to go if she can take the boy with her. She is wrapped up in the child and thinks only of him; he is allowed his own way and is becoming willful and very difficult to manage. Mrs. X. has earned a little money by washing. Through the winter they received help from the town of —, in the spring this help is withdrawn. They live in a rented house on the street back of Dr. R. They have no church connection. Mrs. X.'s parents are dead; she has a brother living at —. Mrs. M. asks if it will be possible to secure institutional care for Mrs. X., or if some arrangement can be made by which her husband can go out working. Sec'y promised to call on June 10th to look into the situation and if possible get a physician's advice on Mrs. X.'s condition and what would meet the needs of the case.

"June 10, '12: Sec'y to —; inquires way to X's house of two children whose father is Dr. R. They say Mrs. X. washes for their mother. Sec'y finds Mrs. X. just returning home from day's work at neighbor's. . . . She is refined in appearance, speech and manner, and the way her house is kept indicates good early training, but it is quite evident that her mind is disordered. The child also appears to be feeble-minded; face has a vacant expression; when spoken to he does not answer, but attempts to repeat what is said: in speaking himself he uses meaningless words: he showed some intelligence in recognizing verses in a Mother Goose book by the pictures and repeating a few words of the rhyme. Is gentle, sweet-looking little fellow. Mother says she cannot correct him because he was near death when a year old, had convulsions, thought she had lost him. Doesn't want to send him to school for another year; thinks he has adenoids. . . . Sec'y asked them to call at A. C. office when they came to — and she will take the child to a specialist who will advise them about operation for adenoids; they were quite willing to do this. (Will enable Sec'y to get Dr.'s opinion of child's and mother's condition.)

"June 11, '12: Sec'y inquires of Dr. J. He remembers Mr. X. and states that he is mentally deficient, and is weak physically from indoor life and probably from lack of proper food. He thinks that the County Home is the only place for this family, all 3 should be there. He will be glad to examine the child as to his mental condition. . . .

"Aug. 17, '12: Mr. X. to office: answers questions necessary to fill out application papers for State Home. Then says he has the worst of all to tell Sec'y: has wanted to speak of this before and ask advice, but could not bring himself to talk of it. Says wife has been drawn into bad company in —, is easily led: the wife of a saloon keeper, Mrs. —, induces her to come to her house—not to the saloon—where she stays all night sometimes: drinking and immorality go on there. She has been going to this place for some time, lately more often, once or twice a week, can't keep her away. Does not come home intoxicated, but shows she has been drinking. Does not conceal her doings, tells him willingly.

"Aug. 19, '12: Sec'y talks with Judge, he sends word to Dr. L. and Dr. R. of — to examine both mother and child.

"Aug. 26, '12: Judge B. asks the Sec'y to come to the Court House; as she has left on her vacation, A. Sec'y went in her place. The Judge

had received the report of the doctors. Found that there was not sufficient evidence to commit Mrs. X. to the Northern Hospital, but thought he would undoubtedly commit the child to the Home for Feeble-minded. The mother had made strong objections to having her child taken from her and said that — people were in sympathy with her. . . .

"Oct. 17, '12: Called at Mrs. X.'s, talked to her about going to Chippewa Falls and tried to make her see that it would be best for her and the child, but she firmly said that she would not go and that she did not wish R. X. to go. . . . Sec'y then went to the Court House and reported to the Judge and District Attorney. The Judge said he had decided that he would commit Mrs. X and R. to the Home for Feeble-minded at Chippewa Falls if Mrs. X. would give her consent. Sec'y felt sure that she would not give her consent, but the Judge and Dis. Attorney wished Sec'y to talk with her and try to win her consent. (Neither were committed. . . .)

"Dec. 11, '14: Mr. X. to office. He wondered if something could not be done to stop the way things are going in his home. Urged Sec'y to come to — and see Dr. R. and Dr. H. He had been out to — and heard stories about the way she had done. A Miss —, with whom she at times stayed, said she had done very questionable things and Mrs. — told him that men went to her rooms at night. Now R. and O. come frequently and bring food and they have a little party. When asked why he didn't order these men out of the house, he mildly said he didn't invite them and they were not his company. . . .

"Jan. 19, 1915: Brought the matter before the Case Committee. They suggested that Mr. —, Assistant District Atty., would be the man to go to.

"Jan. 21, '15: To Mr. (Assistant Dist. Atty.) Told him the situation. He agreed that further evidence must be had. He has known something of the situation and that O. has just been married, but he thinks it will make no difference in his attentions to Mrs. X. He would be glad if he could bring some action against O. He has a friend in — whom he will ask to do a little investigating.

"Jan. 26, '15: Reported to Case Committee."

The Y. Family—"Dec. 24, '10: Mrs. —, Pres. L. B. So., refers; letter received at the Home written by woman but unsigned, says she needs clothing for her children and bedding; will have no Christmas. Sec'y calls. Small house out of repair; woman and children home; beds not made, place untidy and children dirty. Woman says she has been sick a great deal, had operation for appendicitis and abscess in Jan. '10 and has not been well since. . . . Man is teamster, not on full time now; she does not know what wages he gets. Says he is good to her and does not drink. Her mother lives in —, her father in —. They separated a year ago because her father drank and was abusive. Of eight children they had, only three are living. She was brought up by her grandmother, who died when she was twelve years old. . . .

"June 28, '12: . . . Boy to office on bicycle,—Says his father was kicked by a horse last Friday, sick ever since. Dr. B. attending. . . . Sec'y inquires: he says man was not kicked by a horse, his ailment is of a

private nature, will improve if he keeps quiet and remains in bed a couple of weeks; won't get better as long as he shoes horses. Says man claims he does not drink, but Dr. says he has always caught a smell of liquor—whiskey—on his breath when near him: thinks him "an easy spender," but a steady worker. . . . Dr. B. was called in May when woman had bad case of crysipelas; house was in filthy state then; had not known them before. . . .

"June 14, '13: Miss K., school nurse, called at office in regard to Y. family. On examining the children at school she found them in filthy condition. She then called at the home and stated that she had never seen a place in Milwaukee in as bad a condition. She thought something must be done and immediately. . . .

"Jan. 22, '13: Mr. — phoned saying that conditions were no better and asked Sec'y to come to the school and see the children herself. Sec'y called at the school and principal called children in the office. They were unwashed, their clothes filthy with a very unpleasant odor to them. (Children reported as irresponsible in school.)

"Sec'y made arrangements with Dr. B., Health Officer, to call at the house and inspect it. Dr. B., Miss —, and Sec'y called at the house, and found the kitchen floor covered with grease and filth and the beds not made and the bedding impossible to describe. Dr. B. told Mrs. Y. that he would give her until Saturday to get the house in better condition.

"Jan. 25, '13: Called with Dr. B. Conditions somewhat improved. Dr. B. left message for man to come to office Mon. eve. Man came and announced that he was through with all of us as he had moved his family to — the night before."

Again, in our county the mother of three small children became insane recently. Her mother and grandmother before her were insane. Fortunately for the children, they fell to the guardianship of the State School. These children will be placed out, we hope, in good homes, but "the end is not yet."

Inhibition by Substitution.—However sure we may be of transmission and contamination through heredity, and however well we may dam up the stream already polluted, reason leads us to expect that absolutely pure strains may become polluted by an original poison being thrown in extraneously. That such is the case is borne out by the facts of this study. So when we find such an environment as that of a village of 1,500 inhabitants which has its common prostitutes; as that of a city of 4,500 which supports its "common boarding-house"; when we find throughout the major parts of the county, that saloons crowd the population limit established by law and that their doors observe no closing hours, swinging both ways seven days in the week, we cannot attribute the 2.35 per cent of defectiveness of the population of such county entirely to heredity. For the above conditions there are obvious remedies and that which includes them all is:

Crowd out the bad and put something better in its place. Social centers, community centers, boys' and girls' clubs and Y. M. C. A.'s and Y. W. C. A.'s are some of the substitutes, not one of which is now supported by the county at present.

Introduction of Efficient Social Leadership.—Again, when schools drag an ever-lengthening chain intellectually and leave to accident and caprice instruction in duties and rights in an increasingly complex social organization and when the energies of the church are dissipated by internecine strife, and its efforts are concentrated upon hymns, prayers, sermons, and testimonials; when the local press caters to the low moral standards of its subscribers and lauds to the skies, at his death, one who has for thirty-three years assiduously debauched the people, then we should expect degeneracy to sap the energies of society.

The remedy is: Develop efficient social leadership; let the schools be consolidated under effective discipline; purify the churches of cant and align them with the best 20th century ideals. By these means the moral standards of the community will be raised and much will therefore be done toward relieving the community of crime and debauchery.

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THE VALUE OF MENTAL, PHYSICAL AND SOCIAL STUDIES OF DELINQUENT WOMEN¹

EDITH R. SPAULDING²

During the past few years laboratories have been established in connection with various reformatories and penal institutions throughout the country for the purpose of making mental, physical and sociological studies of delinquents. As a result of these studies it has been possible to make recommendations for certain measures of reform in our penal system, which should furnish us with greater resources for individual treatment. The following eight cases of delinquent women may serve to express some of the greatest needs which are felt at the present time. They show the following characteristics: Two are cases of mental disease; the third, one of mental defect; the fourth shows a psychoneurosis; the fifth, a pathological liar, is a neuropath; the sixth, a manic-depressive temperament, shows much immaturity; the seventh is a colored girl, who shows much emotional instability, and in whom racial primitiveness is a dominant characteristic; while the eighth demonstrates environmental influence in the case of a woman who shows no abnormal mental characteristics.

I am much indebted to Dr. Fernald and Miss Dawley of the Laboratory of Social Hygiene for the psychological and sociological data which have been included in these histories.

CASE I

Agnes B., aged twenty, married, is an American whose offense is, "contracting venereal disease in the practice of debauchery." The mental diagnosis is dementia praecox. Agnes states that her mother died of "abscess of the ovary" when she was nine years old, and that her father died of "heart failure" four years later. The paternal grandmother and grandfather and a paternal aunt all died from heart trouble. One aunt is said by the patient to have been in a hospital for

¹This paper was given in substance before the Woman's Association at the Annual Congress of the American Prison Association, New Orleans, La., Nov. 21, 1917. At the meeting of the Woman's Association, the women of the city of New Orleans who were interested in the subject were invited to be present that they might learn of the work in social reform which was being done in some of the northern cities. For this reason the subject has been dealt with in a very general way and case histories have been chosen which show no unusual symptoms or unexpected findings, but which represent the types found in all large groups of delinquents, and which require the varying yet obvious treatment that no state in the Union is yet adequately equipped to furnish.

the insane. The father was alcoholic and sexually promiscuous and a maternal aunt was moderately alcoholic.

Agnes was born in New York City, where she has lived most of her life. After the death of her mother she was taken by the Gerry Society for a few days, with her brother and sister. All three were then sent to live with their maternal grandmother, where our patient remained until she was fifteen years old. It was later said that this home was filthy and that the children were sent to saloons for beer by the grandmother. Investigation, however, did not bear this out—and the brother and sister are now doing fairly well. When Agnes was a child she had spinal meningitis, after which she showed much nervous instability. On this account and because also of some heart trouble, the physician advised her remaining away from school much of the time. As a result of her irregularity in attendance she made little progress and apparently did not get beyond the fourth grade at the age of fourteen. She then became quite unmanageable, and when fifteen ran away from home with a man seven or eight years older than she. She was gone sixteen months, during which time she had a child which died soon after birth. Seven months later, when she was again pregnant, she was found by the police and taken home. She ran away again the same night, but returned a week later to say she had arranged to marry a man of fifty-six, who appeared to be sorry for her. Her grandmother gave her consent and they were married. She lived with him but two weeks, however, and then returned to her first consort. The following four years were spent partly with this man, who is thought to be the father of her three children, and partly at the hospital where she went for four different operations. She returned to her husband occasionally, but resented his jealousy of the other man and expressed her indignation on one occasion by throwing a plate at him, which left an ugly wound. Agnes laughs as she recounts their quarrel, and seems much amused also because, when younger, she threw a knife at an uncle, which fortunately went through the window instead of hitting him. Several months before entering the institution, she contracted syphilis—she says from her consort. She went voluntarily to the hospital for treatment. The physician had difficulty in finding a vein, and started to cut down on it. As Agnes had no intention of having this done and could think of no alternative, she kicked the physician. She refused further treatment, and was therefore taken before a judge. He sent her to a mental hospital for observation and as no evidence of mental disease was found, she was committed to Bedford.

The psychological examination on entrance showed that according to the Stanford Revision of the Binet Scale, her mental age was ten years and five months. Her handwriting was poor. She did not know the most commonly known geographic facts. She was considered a borderline case tending toward the inferior group of normals in mental ability. It was recognized during the examination that she was emotionally unstable. The physical examination revealed the secondary eruption of syphilis. She had two illegitimate children, who were taken to a home by a social worker while she was being treated at the hospital. During the mental examination she revealed feelings of animosity toward the social worker, whom she had not seen for some weeks, and said she felt that at some time she might do her bodily harm. A few weeks after admission to the institution, she showed marked auditory and visual hallucinations, and it became necessary to transfer her to a hospital for the insane.

SUMMARY OF CASE

Here we have a case which began with poor heredity and was handicapped from childhood by a disease (spinal meningitis) which apparently was followed by much nervous instability. She was further handicapped by a poor home and by lack of training in school. Later on her environmental conditions were not good and her physical condition continued bad. Furthermore, on account of her limited mental capacity, she had no intellectual resources. The development of symptoms of mental disease makes her adjustment as a responsible member of the community more difficult than ever. Even though she should recover from the present acute attack, she will probably spend most of her life in some custodial institution. She represents the type of case which should be weeded out of the penal system through the aid of laboratories, either in the court or in the penal institutions themselves, and transferred to the state hospital system that cares for the insane. This case, it will be remembered, was sent to a psychopathic ward for observation before commitment, but at that time there was insufficient evidence of a psychosis to commit her to a hospital for the insane. Furthermore, she was not considered a committable case until she had been in the institution several weeks, at which time the more active symptoms of the disease appeared. Such a case as this suggests the great need which is being felt everywhere for psychopathic hospitals with out-patient departments where children as well as adults who show nervous instability can be watched and any social maladjustments corrected in their earliest stages.

CASE II

Margaret D., aged twenty-four, is an American whose offense is "loitering." The diagnosis is neuro-syphilis. Margaret's father died of asthma when she was young. He is said to have been very nervous, and the patient is thought by the family to resemble him in this. The mother is an intelligent woman who takes life easily. Aside from the fact that a brother and a sister faint at the sight of blood, the family history appears to be negative.

Margaret was born in New York City and was one of five children. After the father's death, the mother went out to work and apparently had a hard time to keep up the home, although their moral standards seem to have been fair. When a child our patient had St. Vitus' dance, and for the last two years she has had fainting attacks. She attended school from her seventh to her fourteenth year, reaching the fifth grade, but was irregular on account of chronic middle-ear disease. According to her own statement, she then worked in a box factory, and as a chorus girl. When fifteen years old, she disappeared from home and her mother heard nothing from her for about a year. She says she left home because her older brother would not let her marry a boy of seventeen whose father kept a saloon. Her brother said they were both too young, but our patient thinks he did not consider the boy good enough. When she returned home she said she had married. She had "picked up" her husband on Broadway on September 8th, and had married him on September 15th. She and her husband lived with her mother for a while, but he drank and did very little work, and she requested him to leave. Margaret says she separated from him really because he wanted her to prostitute for him. "I told him if I was going to do anything like that I'd do it for myself and not for any man." Asked if that were better, she said, "Of course it is, isn't it? A woman is a fool to keep a man—I will keep myself, but not no man." Margaret remained at home for a while, but quarreled again with her brother, because he "cast up her unfortunate marriage" to her. She then went to live with a man who had a furnished room and there prostituted during the following seven months. She states that she was first arrested when she was with a man who stole two coats. He was sentenced and her sentence was suspended. Later, while living with a sailor, she was arrested for soliciting and sent to a home where she remained six months. After leaving the home, she worked for a few months and then left home and lived with another sailor. Since then she has prostituted occasionally. While the second sailor was away she was arrested. Ap-

parently there was not enough evidence of her prostituting, so the charge of loitering was brought against her. On entering the institution she refused most emphatically to do anything she was asked to do, and with great bravado, said she was going to kick the doctors if they tried to examine her. In spite of her terrible threats she was very docile, and has always done what she has been asked to do, even though declaring at the same time that she would not.

On entrance the psychological examination showed her mental age according to the Stanford Revision of the Binet Scale to be ten years and two months, and she was classed as a borderline case, probably a little below the average of reformatory girls. She had gained little for her seven years in school. She made mistakes in the addition of a column of two figures and in subtraction; was not sure of her multiplication table (seven times nine is sixty-two or sixty-three, eight times eight is fifty-four"), and has forgotten the processes of her multiplication table seven times nine is sixty-two or sixty-three, eight times eight is fifty-four), and had forgotten the processes of multiplication and long division. She said that Lincoln held America up as long as he could till he was killed—that by this means he kept us out of war. Regarding the present situation, "You might as well say the English are not fighting at all—our poor men have got to go over and fight for them." Thought Belgium was helping Germany. She showed considerable emotional disturbance while being tested. Physical examination showed a heart lesion and defective eye-sight. The laboratory test showed the presence of syphilis. The psychiatric examination showed some of the characteristics of syphilis of the central nervous system, which diagnosis was verified by the examination of the spinal fluid.

SUMMARY OF CASE

In this case there was no evidence of bad heredity. However, Margaret had St Vitus' dance when young and was said always to have been nervous and delicate. Her nervous instability, together with her subnormal mentality, were doubtless contributing causes, at least, to her running away when she was fifteen years old, while her brothers and sisters, who were more stable and perhaps of more normal mentality, remained at home. She tells of being very much petted in her childhood by her father, and of feeling much antagonism toward her older brother, who wished to control her after her father's death. Her marriage was an unfortunate one, and perhaps her greatest misfortune is that having contracted venereal disease, it should have affected her nervous system. This will probably cause her to

deteriorate in spite of the intensive anti-syphilitic treatment which she is receiving at present. Although this case might be committed to a hospital for the insane, as it is possible for her to receive where she is at present more energetic treatment than she would receive in a larger hospital, it was decided to delay her commitment in order to see whether or not it would be possible to help her while the disease is yet in its early stages. It is in cases such as this that an early diagnosis is of the greatest possible value in reconstructing the individual, and making it possible for him to be a responsible member of society rather than, through rapid deterioration, to become a public charge. Such a case again demonstrates the need of psychopathic hospitals in the community where mental disease can be treated early or entirely prevented, and psychiatric clinics in connection with courts and penal institutions where such cases will be recognized.

CASE III

Martha L., aged seventeen, single, is an American, whose offense is "vagrancy." The mental diagnosis is feeble-mindedness. Martha represents a case of mental defect not infrequently found in very poor and isolated country districts where there are many more defectives.

Martha's father is a farm laborer and earns about \$30 a month. He is alcoholic. The mother is extremely alcoholic, is considered a "dissolute person" and is undoubtedly feeble-minded. Three of Martha's sisters are epileptic. One of these has been in a training-school and was very wild before she married, but has now settled down and has a fairly good home. The two other epileptic sisters are living at home. One child died of tuberculosis in infancy. One child of nine is still in the first grade in school and is considered "dum." The family live in a fairly good sized, but dirty and run-down house about three miles from a small village. There seemed to be only one chair in the house which was stable enough to offer to the investigator. At her visit all the family were bare-footed, even the mother, and the three-year-old child had nothing on but a shawl. Everything expressed extreme poverty.

Martha has lived all her life in a few small towns not far from each other. Her mother says that she went to school from her eighth to her sixteenth year, but her sister says that she went from the time she was fourteen until she was sixteen. However, she was able to reach only the first grade. After leaving school she earned from \$3.50 to \$4 a week doing housework, but she stayed in her positions only a short time. The police say that she has been immoral for some time

and that recently she has been consorting with colored men. Martha herself insists that she is not in any way to blame. "They all followed me down to the station and pulled me in the alley."

The mental examination made after her entrance to the institution showed her to have a mental age according to the Stanford Revision of the Binet Scale, of seven years and eight months. She can do addition of two columns but fails in subtraction, and is unable to do multiplication or short division. She says two from four leaves five, four times two is nine; four divided by two is five. She cannot write her name correctly, and does not know the month. She is thought to show marked mental defect of almost imbecile grade, and clearly to need permanent custodial care. Physical examination shows her general health to be good. She has no venereal disease.

SUMMARY OF CASE

Such a case as this is typical of those found in the remote country districts in which only the very unenergetic and usually mentally deficient individuals have still tried to eke out a living from unproductive soil. The more intelligent ones realize the lack of opportunity and gravitate to the cities or to more productive places, leaving such families as this through the process of elimination. The pity of it is that the parents could not have been given custodial care many years ago. The most that can be done at the present time is to put our patient and as many of her sisters as is possible in a custodial institution for the feeble-minded, or, at least, in some restricted environment in which they will be sufficiently protected from the usual temptations of the community, and the community in turn will be protected from them. Our great need now is to increase our facilities for dealing with the feeble-minded, so that we shall be able to care for the large percentage of mental defectives who are at present being sent most unjustly, as a last resort, to reformatory and penal institutions.

CASE IV

Nellie F., aged twenty-six, single, is an American of Russian parentage. Her offense is "soliciting." The mental diagnosis is psychopathic personality. Nellie's father died of pneumonia at sixty-one years. He was a steady worker and always supported his family well. The mother seems to be an intelligent person but is depressed at times. She is said to have hysterical attacks and faints when upset "at the sight of something." She apparently did not understand Nellie and feels that she has always been different from the rest of the children and difficult to manage. Nellie shows considerable affection for her mother, but is declined to blame her for not being strict enough.

However, this is very characteristic of Nellie's attitude. She blames everyone except herself for everything that has ever happened in her life. The home was quite prosperous while the children were small, but when Nellie was nineteen, the father lost most of his money so that later they were not so well off. However, Nellie's three sisters are doing well.

Nellie was born in Brooklyn. She attended school from four to fourteen, regularly, graduating from the grammar school. After that she took a commercial course from which she graduated three years later. While at the commercial school, she was very nervous and depressed, and as she was taking piano lessons at the same time, the doctor who was consulted, advised her to give them up, as she was thought to be overworking. Although she had studied stenography she never took a stenographic position, but did some clerical work for six months, earning \$8 a week. She soon lost interest in her work, and became depressed, remaining at home for a period of two years. At the end of this time she felt she would like to go to work in a distant city, although she had no friends there. She found a position there and at first worked well, living in an inexpensive boarding house. Later on, however, she met undesirable companions and was soon arrested for loitering. Her mother, who had already visited her, went to her again and persuaded the judge to let her return to New York, where she was put on probation. She was first arrested in 1910 when she was nineteen. In the last seven years, she has been arrested four different times for soliciting. She has been put on probation each time, and her family and her probation officer have done all they could to get her a position and keep her from returning to the streets. She has had various positions in clerical work, but has never kept them more than six or seven months at a time. Recently she has been living with a sailor who seemed fond of her and says he would like to marry her.

On entering the institution she was very noisy, banging on her door during the night and creating considerable disturbance. She said it was because she objected to having her door locked. She resented being sent to an institution, having always received probation before, and said she disliked the confinement. The psychological examination on entrance to the institution showed her mental age according to the Stanford Revision of the Binet Scale to be fifteen years and nine months. She showed satisfactory results from the amount of educational training she had had, and she was excellent in questions of practical knowledge and general information. The physical examination

showed her to have defective hearing, and somewhat defective eyesight; although laboratory tests gave no evidence of venereal disease, subsequent examination showed an inflammatory pelvic condition, evidently resulting from gonorrhoea. During the mental examination she gave a history of being depressed in the past. However, she showed good insight regarding her past failures and admitted that she had never been willing to face situations and take the blame herself for what she had done. Since coming to the hospital, she has frequently had periods of excitement, at which time she is also very much depressed. The basis for her trouble is usually found to be fears of some sort which dominate her. Sometimes it is fear of approaching insanity, again it is the fear of fire, again of some article which she fears may fall, causing injury to herself or some of her friends.

SUMMARY OF CASE

Here we have a woman who during her whole life has shown much mental instability. This has invariably prevented her from using the really high-grade intelligence with which she was endowed, and from holding her positions for any length of time. At the present time, while not insane, she is suffering from a psychoneurosis which makes it imperative for her to receive therapeutic rather than disciplinary treatment. This would not be possible with the equipment of the majority of reformatory institutions. She needs encouragement and must be nursed through her disturbed periods rather than punished for them. Such a case as this demonstrates well the great need of psychopathic hospitals or wards in connection with every reformatory institution, where cases may be treated which do not belong in hospitals for the insane and which will do badly among the main group of the reformatory population.

CASE V

Ethel F., aged seventeen, married, is an American. Her offense is vagrancy. She represents a neuropathic type with multiple tics. She is also a pathological liar. The father is a man of good principles and is fairly intelligent. The mother is intelligent and capable, and much disheartened by Ethel's commitment. One brother is said to have a tuberculous ear, and it is also said that he has been found stealing. A maternal aunt died of tuberculosis. Our patient herself has had cervical adenitis.

Ethel was born in a little town on Long Island. She was not strong as a baby and cried a great deal as a child. She has always had nightmares and complains now of disturbing dreams. She went

to school from her fourth to her thirteenth year, leaving in 5B grade. She went irregularly and was very nervous and restless while there. When thirteen she left school because the doctor felt it was wiser on account of her nervousness, particularly as she had some disciplinary difficulties with the teacher. When nine years old there was twitching of the muscles of her face, which grew worse, finally involving her head, shoulders and feet. She was always irritable as a child and other children did not like to play with her for that reason. After leaving school, she worked at a factory for a short time, and later on took care of children, earning a small wage. When she was sixteen she married a soldier whom she had known but a short time. After she had lived with him for a few days, he left the city. A month later she was arrested for soliciting and sent to an industrial school for six months. After that she worked in a sanitarium for a short time, but her work was so unsatisfactory that she was discharged. It was said of her there that she was not amenable to rules or discipline, and that she was very indiscreet in her attitude toward men employees. She then took a furnished room under false pretenses, pretending to do investigation for the Y. W. C. A., but really going out at night soliciting. She was reported to the police, and as she told the judge she had contracted a venereal disease, she was committed to the reformatory.

The psychological examination showed a mental age of thirteen years and three months, according to the Stanford Revision of the Binet Scale. Her general information was fair, and she was good in all tests of practical knowledge. She was considered of the dull normal grade. Physical examination shows four distinct tics of the muscles of the face and neck. There is no evidence of syphilis, but there is clinical evidence of gonorrhoea. She complains much of headaches on arising each morning. Her vision is very defective. The mental examination shows nothing abnormal except her lying propensities. This seems partly to be done in defense, but her imagination frequently furnishes much more than can be accounted for in this way. She is quite childish in her fabrications, and particularly so in her belief that people will accept them as the truth.

SUMMARY OF CASE

The whole history of the case points to a neuropathic personality which showed instability all through her childhood. Too great leniency in the home which is often shown children who are not strong enough to go to school regularly, is frequently an additional cause in the absence of control and self-discipline of later years, and should be

considered in this case. Ethel's parents were unable to manage her and keep her away from temptations which were particularly common in the town in which she lived. When she found work, her unstable nature again handicapped her, and the undesirable habits which she had already formed were an additional drawback. It is difficult to say what might have been done in a case of this kind. Surely she should have had much closer supervision in the community, but this seemed to be impossible even in a fairly good home. A psychopathic hospital with a good out-patient department would have been a help in recognizing the underlying nervous defect in childhood and in some way adapting the environment to the inferior nervous status of the individual. Such a case is one for treatment but we must not lose sight of the fact that in such cases, good training after the case has been sufficiently studied and analyzed, and the establishing of good mental and motor habits, should constitute one of the most important factors in the treatment.

CASE VI

Amy S., aged seventeen, single, is an American. Her offense is "vagrancy." She exhibits the manic-depressive make-up, and with her emotional instability shows much immaturity. Amy's father was a fairly well-educated man but was "cranky and stubborn." He and his father were both said to be wild in their youth. Her mother has apparently no deep affection for the child, but is supposedly a very able woman. She has had some difficulty, however, in controlling one of Amy's brothers, who has been sent to different institutions several times on account of his bad behavior, and at the present time is in the army. A sister and a brother of the mother, and a brother of the father died of tuberculosis. One sister also died of tuberculosis when fourteen.

Amy's father died about eight months before she was born, and her mother remarried when she was two years old. When she was nine, she went to live with her grandparents, who had offered to give her an education. She lived with them until fourteen, graduating from the grammar school. Although she could have continued to live with them and go through high school and normal school, she preferred younger companions and the life of a livelier town. For this reason she returned to her mother in the summer, and in spite of all entreaties refused to go back to her grandfather's and continue school. Instead, she went to work in a factory, but because her companions were "too good" there, she changed to another factory where, although the wages were not so high, she had gayer and less desirable companions.

For the last three years she has been beyond her mother's control and is said to have frequented saloons and "chop suey houses." Although she has been going about with bad companions for three years, it is probable that she has been prostituting only for the three months preceding her arrest.

In the psychological examination soon after her entrance to the institution, her mental age was found to be fifteen years and three months according to the Stanford Revision of the Binet Scale. The results of her education and her general information were good. She was quick in her reactions, and light-hearted and co-operative during her interviews. She was also frank in admitting that her stubbornness in not giving in and admitting that she had been in the wrong was at the bottom of most of her difficulties. The physical examinations showed her to have enlarged glands of the neck, probably tuberculous in origin, which have been operated upon since she came to the hospital. In the mental examination she showed very childish reactions and no feeling whatever of responsibility. She liked being a child and wished to remain one. Her subsequent history in the institution has corroborated this first impression. Stamping her foot she would say, "I have always had my own way and I mean to keep on." Although Amy has been the cause of some very stormy experiences, she has for the last six months, shown very good control and has tried hard to become more mature.

SUMMARY OF CASE

Here we have an overenergized girl, full of fun, and with no comprehension of responsibility. Emotionally she swings with lightninglike rapidity from one extreme to the other. A word can send her to the heights or to the depths, and one is not sure what the emotion of the next moment will be. Although much of her emotional unrest is doubtless due to innate characteristics, possibly inherited from her father, her early training did not help to offset it by establishing some sort of control. In her grandfather's house later on there was insufficient outlet, as she was with much older people who did not understand the needs of such a very active child. Later, she was subjected to an environment which proved to her the greatest possible temptation, and offered the excitement which she craved. One feels that Amy's training should have begun before she was five years old to have counteracted her effervescent personality, and its sequelae. Such a case is sometimes impossible to control in the midst of adolescence in an environment which offers every possible temptation. In a dif-

ferent social level she might have been sent away earlier in her career to a boarding school, although she might not have remained there. The only alternative as it was, however, seemed to be the reformatory, as probation had been tried without success. In this case, the question of parole is going to be of the greatest importance. It is possible to teach her control under the restricted life of an institution. She is loud-voiced still, it is true, and even with considerable effort has not been able to control the loudness of her talk and laughter. But she has gained in the more essential things and the problem which will remain is to guide her through the intermediate stage of parole so that the control which she is establishing may increase rather than diminish under greater responsibility and temptation. With our present parole system adequate supervision is usually impossible. Much more emphasis must be placed on this in the future than has been in the past. An adequate parole system as well as an adequate probation system calls for a much larger number of trained workers than is at present furnished by most states and cities. Such workers must be trained to recognize the individual needs of their protégés and to know the various resources which the community has to offer.

CASE VII

Blanche F., aged seventeen, single, is a colored girl, born in America. Her offense is "grand larceny." The diagnosis is psychopathic personality, and in her make-up racial primitiveness is a dominant characteristic. She has pulmonary tuberculosis. Blanche's father was a white man, and was immoral and alcoholic. He died of tuberculosis. The mother, a colored woman, was alcoholic and immoral, and deserted the father when the patient was nine years old. The father lived with his children in a tent.

Blanche was born in New York. When thirteen years old she ran away from home and lived with a man as his wife for a year and a half. Since then she has been consorting with the most desperate type of men, at least according to her own statements. She describes going with two men and another woman to a new town to "size up" the place. They would then gag the watchman of the place they wished to rob, and the girls would stand guard while the men went through the safe. After this they would get out of town on a freight train or any other available conveyance. She has been alcoholic and a drug addict. She has also frequented what are known as "creep houses"—houses of ill-fame in which robbery takes place as a regular thing. She says unhesitatingly that she would murder a man who "squealed on her."

In spite of this bravado, Blanche is a great coward, and although she is very unstable emotionally, invariably responds well to discipline.

According to the Stanford Revision of the Binet Scale she has a mental age of eleven years and two months. Besides her lack of emotional control, she shows much racial primitiveness. This is evidenced by absence of inhibitions in her emotional life. She is boisterous, cruel, and laughs at any unfortunate persons. Her life is frankly controlled by sex thoughts and practices. Her jealousy dominates her to the extent of causing her to do bodily harm to anyone who arouses it. Her whole attitude as she walks up the corridor suggests the freedom of primitive man, and tent life under the open with primitive means of livelihood and warfare.

SUMMARY OF CASE

In all of us there are, we are thankful to say, relics of primitive peoples. Many unbridled emotions, however, have been fitted to the traces and have been made to serve us in a variety of ways, some to a greater extent than others, so that we are able to adjust ourselves to the present level of civilization. The direction which these primitive emotions and tendencies take is determined partly by our early environment and training. There are cases, however, in which the best training and environment are unsuccessful in adapting the individual to the present level of civilization. A case such as this, however, presents not only primitive characteristics, but also a total lack of training in fashioning them into the guise of present day customs. Even without the tuberculosis which makes the prognosis unusually unfavorable, she will probably always be an unsolved problem in the community. While all cases show some elements of primitiveness, in her case it stands out in pure culture, and it would be difficult to imagine any parole or probation which would be sufficiently influential to help her to adjust herself to present day standards. On the other hand, with her good mentality, there is no excuse for permanent segregation. Reformatory life should be able to contribute something to her power of control, although she will probably contribute little to its life during her stay.

CASE VIII

Alma H., aged twenty-four, single, is a Norwegian. Her offense is "petit larceny." She shows a normal mentality. What are the factors which have led to her present condition? As nearly as can be ascertained from the few relatives who live in this country, Alma's heredity is good. She says she has one sister who has fainted from

childhood. There is, however, no evidence of inherited tendencies toward physical or mental disease, or mental defect.

Alma was born in Norway in a prosperous town. Her father, who had been a contractor, owned a large farm. The family were well-to-do, and Alma had fairly good educational advantages, attending school from her seventh to her fourteenth year, and reaching what corresponded to our eighth grade. She afterwards attended a school where she learned cooking and sewing and housework. When she was seventeen she met a man who came from a distant town, by whom she was seduced. He spent money freely and she thought him a man of considerable importance. He wished her to take him to her house. He had forced her on one occasion only, she says, to have sexual relations with him, and when she found she was pregnant as a result, she was ashamed to take him home. She thought that the man intended to marry her, but believes now that he had no money and wished to get hold of her father's money. Her father sent her to a private hospital several months before the child was born, so that the people in the town would not know about her condition. Although the family said very little about her having had the child, and did everything they could to care for it, still she felt the situation keenly, and realized how much it distressed her parents. Wishing to free herself from what she considered her disgrace, she wrote to an uncle who lived in America, that she wished to come to him. He soon sent funds, and after she had arrived in this country took her into his own home. There she felt conscious of his family's better circumstances and not liking to be dependent on them, and being somewhat diffident about meeting their friends, she found a position in general housework. Her work was satisfactory and her mistress, a doctor's wife, became fond of her. At the end of a year, however, she grew restless and worried a good deal over her child, which her family were caring for at home. She left her position and went to a large city where she found employment in a restaurant. While there she met a man who tried to persuade her that she was foolish to serve customers when if she would live with him she would be one of those served. At first she thought that she was fond of the man and went to live with him. Later on however, he induced her to go on the street for him, and she says that she became afraid of him. She was arrested in New York for soliciting in April, 1917, and was given probation for six months. Through the cleverness of a detective her companion, who was waiting outside the court to see what the disposition of the case would be, was also arrested, and on account of papers

found upon him, it was thought that he might be a spy, as well as being involved in white slavery. On account of his peculiar actions he was sent to a mental hospital for observation. Later on, when he was released, he met Alma and together they were implicated in the larceny of a hat from a department store. Alma is inclined to blame the man for all of her troubles, and insists that being free from him is a tremendous relief. Whatever may have been the truth of her early history, it would seem that he has been the greatest factor in turning the last few years of her life into undesirable channels. Although she admitted previously that she thought him a spy, she now, as might be expected, denies it. On entrance to the institution, she was much depressed, but the depression seemed the result of anger at having been caught, rather than any remorse at having stolen or prostituted.

The psychological examination showed her to have a mental age of eleven years and eleven months by the Stanford Revision of the Binet. Her record in performance tests was excellent and the educational tests which involved reading and writing show that she was greatly handicapped by her lack of training in English. The language factor was thought to account for the fact that her mental age was as low as it was, for she gives evidence in all other tests of a normal intellectuality. During the mental examination she showed considerable emotion when talking of her child which was in Norway. She would not talk freely, and gave the impression of keeping back much more, probably for her own good. When seen later on she was much quieter, and had apparently resolved to make the best of her sentence. She still, however, would not talk freely on certain subjects, giving the impression of a clever woman who could give much information of value if she so desired. The physical examination shows patient to be in good condition. The laboratory tests do not show the presence of syphilis, but give evidence of her having gonorrhoea.

SUMMARY OF CASE

It is difficult to tell in such a case as this what rôle such factors as adolescence or an overactive sexuality or errors in training may have played besides the seemingly unfortunate environment factors. The fact that she had had an illegitimate child proved to be an intolerable situation to which she was unable to adjust herself. Her flight from her predicament instead of facing it undoubtedly prepared the ground for the later experiences which influenced her so unhappily. This woman presents a normal mentality, and if the three years spent

in prostitution have not formed too ineradicable habits, the case should be readjusted and reconstructed with the help of very careful follow-up work on parole. She must be kept absolutely from the man who has had such an influence in her life, and other interests he brought into her life which will be sufficiently interesting to make up for his loss, which will be considerable. It is difficult to say now whether her aversion for him is a true one or simply a mask to enable her to get off as easily as possible. This case had already been tried on probation, and in spite of the fact that much interest was taken in her, it seemed impossible to keep her from meeting the man, although that was understood to be one of the conditions. However, it is this type of case in which both probation and parole should do their best work.

GENERAL SUMMARY

Our greatest needs, then, at the present time, as shown by the cases which have been studied, are as follows:

(1) Clearing houses, or laboratories, where psychologists, sociologists, psychiatrists and other specialists may make complete studies of all cases. These should be in connection with courts for the examination of cases before commitment as well as in penal institutions where a more detailed study can be made after commitment. We believe there should also be in connection with every reformatory or penal institution a psychopathic hospital where cases which show abnormal mental characteristics, but which belong neither in hospitals for the insane nor among the general reformatory population, may be cared for during their entire residence in the institution.

(2) Institutions for the feeble-minded, or suitable colonies, in every state in the Union sufficient to care for the mentally deficient individuals who are unable to support themselves, and at the same time protect themselves from the temptations of life in the community.

(3) Psychopathic hospitals should be established in all large cities for the diagnosis and treatment of all cases showing abnormal mental characteristics, and to aid in preventing the development of mental disease.

(4) Increased facilities for supervision on probation so that every case which has the capacity to adjust himself to social conditions may be given every possible chance and institutional treatment used only as a last resort.

(5) Increased facilities for supervision on parole so that the individual who comes out of the protected environment of an institu-

tion will not be plunged immediately into an unprotected environment to which he will be unable to adjust himself at once.

(6) Increased resources in institutions for re-education along academic, domestic and industrial lines as well as for the treatment of physical disease and abnormal mental conditions, so that when the individual is returned to the community, he will have developed to the greatest extent possible his mental, physical and social capacities. There will be then less danger of his being a menace to the public from a physical standpoint, and economically less danger of his becoming a public charge.

Our greatest need at the present time is the enthusiastic support of the public in these measures of reform. With the new opportunity which is coming to women to have influence in bringing about such measures, it is particularly necessary that they appreciate the needs of the large numbers of women who are at present confined in industrial schools and reformatories and penal institutions, as well as of those who may perhaps be prevented from entering them.

There is much to be accomplished in the field of criminalistics, and its accomplishment depends largely on the men and women in the community who appreciate the situation and who are ready to take their share of responsibility and advocate the constructive reforms which we all know are needed.

TESTIMONY AND HUMAN NATURE

M. C. Orto¹

The state must find some just and effective way of dealing with the anti-social being or become a memory and an admonition, along with Lot's wife. The fundamental problem is, of course, prevention, but two others are even more immediately pressing: How best to determine the guilt or innocence of those accused, and how to deal wisely with those found guilty. Something is being accomplished in the way of solving the latter problem, but the former is treated for the most part as non-existent. Moreover, until a less suspected method of establishing guilt or innocence shall have replaced the present one, it is vain to look for the dispersal of the fog of sentimentality through which many people view crime and criminal. And any substantial reform waits upon a wide-spread appreciation of the great difficulty of arriving at the truth through the taking of testimony.

It appears to be a matter of perennial surprise to most people that conflicting stories are told by apparently truthful eye-witnesses of a particular occurrence. Even those who in one way or another have gained some insight into the nature of testimony and therefore expect a certain amount of disagreement under ordinary conditions, feel that such discrepancies are due in the main to factors which might easily be controlled. Given reliable witnesses, they think, and a capable examiner will find it a relatively simple matter to discover just what took place. If there is fundamental disagreement as to what happened during the labor troubles in Colorado, when the German army invaded Belgium, or the angels marched at Mons, this is not due to the seeing, but to false reports of what was seen. It is assumed to be impossible that in the deplorable panic at Calumet, Michigan, the Christmas tree was actually seen to be on fire, that a boy with a burning cap on his head was actually seen hurrying down the aisle, that a man wearing a certain button was actually seen rushing into the hall from the rear. It is assumed to be impossible on the ground that none of these things happened. Such statements are credited to excitement or imagination, if the critic is generously minded, and to prejudice or malice, if he inclines to cynicism. And we are not disturbed by the fact that our position comes to this: We learn what happened by ruling out unreliable testimony; and we know what testimony to rule out as unreliable by learning what happened.

That it is not a simple matter to discover what is reliable and what unreliable testimony has been shown by psychological experiments, and it was shown once more, together with some of the principles involved,

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by an experiment conducted in one of the classes at the University of Wisconsin. For eight weeks, seventy-five young men and women, largely upper-classmen, had been studying logic, when, without warning, a carefully rehearsed disturbance took place in the class room. Student Jones struck student Brown with his fist, whereupon the latter hit his assailant with a book. These students were seated next the outside aisle of a large class room and half way from the front. At the first sign of disaster, student Smith, occupying a seat in the front row and five seats from the outside aisle, threw two silver dollars into the air, and scrambled to recover them as they fell to the floor. The instructor, who was collecting papers from the class when the altercation began, ordered the three students from the room. Taking advantage of this tense moment while the three students were preparing to go and were leaving, the instructor went to the platform in the front of the room, and with his back to the class, looked at his watch, wrote "9:45" on the blackboard, erased the figures, repeated these actions, then faced the class just as the last man to go was at the door. Before there could be any interchange of opinions, he asked the class to write as fair and complete a statement as possible of what had happened. And that the testimony might be of practical use, certain definite questions were agreed upon as the basis of the reports.²

There is no element of surprise in the fact that no report of the affair covered it completely. We all know that attention, like the opera-glass, means enlarged vision, but restricted field, and we are therefore prepared to find that a given witness observed only snatches of what took place. But the most striking feature of the reports is by no means that each comes short of a full description of the disturbance; it is the amount of conflicting testimony, and on matters of importance. For example, in answer to the important question, "Where was the instructor when the disturbance began?" the testimony is as follows: According to 22, he was near the front of the room; according to 20, in just about the middle; while 21 say that he was in the rear. The variation becomes still more striking if we try to locate the instructor more exactly. Of those who insist that he was in the front of the room, one is sure that he was opposite the first row of seats west of the center aisle; another that it was the second row; another that it was the third row, and on the other side of the aisle. Furthermore, each of five different students report, and according to later interviews, would have felt forced to testify under

²The students at the University of Wisconsin are on a self-government basis. They knew that the testimony they gave might be used as evidence in the student court, and that they might be called upon to stand by it. Many of them afterwards stated that they expected their testimony to be so used.

oath, that when the disturbance began the instructor was just in the act of taking his particular paper and was thus opposite to the seat in which he sat. These seats are located on both sides of the center aisle, and from the front to the rear of the room.

Testimony like this shows that the hop-skip-and-jump nature of attention may not be regarded as a light matter in the weighing of evidence, and for this important reason: The breaks in observation do not remain in memory as so many blanks. On the contrary, the snatches that are noticed slide together, and the resulting whole is accepted by the witness himself as a faithful record of what actually took place in his presence. Only the student in seat 26 was quite correct in her statement that "the instructor was just passing the seat that I occupy when I heard a noise as of fighting on my left"; but she felt no more certain of the truth of her statement than did the young men in seats 92, 74, 58, 40, who were wrong. It takes time to collect papers from seventy-five students in a large room, but for these four men all that had occurred from the time they had handed their papers to the instructor to the time when the disturbance began not only dropped out of existence but left no trace of its ever having been. And it is important to remember that the reports were made immediately after the occurrence and not after the lapse of hours, or days, or weeks.

This tendency on the part of observers unconsciously to abridge and contract events and to accept the abbreviation as a true record of what happened, co-operates with another natural human propensity which has a bearing on the reliability of testimony, namely, seeing with "the mind's eye." When testimony is demanded on features of an occurrence which were simultaneous with blind moments in the act of observation, then fragments from other experiences may be introduced, in perfect unconsciousness of the process, to fill up the gaps in question.

It will be recalled that while the men who were ordered from the room were leaving, the instructor stood with his back to the class, writing on the blackboard, until the last of the three "culprits" was nearing the door. Only five of the seventy-five observed this with even approximate completeness; their attention was fixed elsewhere. Still, in answer to the question, "Where was the instructor, and what was he doing when the students left the room?" only six say they do not know. The other 64 give very definite testimony as to his whereabouts and actions. Three state that the instructor went to the door and held it open for the students to pass out; one that he stood in the centre aisle muttering "I'll break this up, or know the reason why"; three have him seated dejectedly at his desk, his face buried in his hands; while the remaining fifty-seven essentially agree that he was

seated at his desk, "toying with the papers that he had collected," (or with class cards, watch chain, piece of chalk, etc.) "as if not knowing what to do," and that "his face wore an expression of embarrassment and uneasiness."

Now granting that the instructor's face testified to embarrassment, it was at the time invisible to most of the students. Their reports here as in their description of his position and actions are a composite of past experience and what they saw when their attention returned to the instructor. What the witness thinks he saw is actually largely a fiction, having its roots in part in his own emotional nature and in part in idiosyncrasies and habits of this or of other instructors, now vicariously doing duty for the unobserved.

The two mental characteristics so far considered play into the hands of a proclivity to make a story of the observed. The snatches retained of an occurrence are not kept in isolation like so many loose beads of knowledge, but are strung on a thread; are combined into what is meant to be a harmonious narrative. It will be recalled that the two men who began the disturbance occupied seats next to the outside aisle of a large room, and half way back. As soon as the disorder was under way, Student Smith, who was seated five rows to the front and five seats from the outside aisle, dropped some money and scrambled to pick it up. Now the interesting fact is that in the testimony these two events are brought together in the relation of cause and effect, and thus become incidents in a story which harmonized them. Two of the accounts will illustrate. "One of the students," reads a report, "either Jones or Brown, dropped some money. A scramble immediately took place between them, while the money rolled toward the front of the room where it was grabbed by Smith who made considerable noise doing it." It was quite natural for this witness to introduce a bit of stage business which gives still more unity to his conception of the disturbance. "There was also," he says, "a very general shuffling of feet as is usual when money is dropped."

In the other account the two occurrences are united under the influence of a common student experience. The seats in the university class rooms are equipped with adjustable desk-arms. Sometimes the mechanism fails to work when the student tries to adjust the arm and occasionally in such cases the arm is broken off and a little steel ratchet-ball falls to the floor. Although at this time no seat-arm was broken off, reports of students sitting in different parts of the room agree in substance with the following: "Brown said something to Jones and then in a minute a scrap was on. In the tussle a seat-arm broke off and Brown tried to poke Jones with it, but it fell to the floor. I heard the little iron ball from the ball bearings roll to the front of

the room. Smith made a grab for it and so he too got into trouble." It is striking that among those who found this particular connection between what Jones and Brown did and what Smith did, is the immediate neighbor of the latter, whom one would expect to be a reliable witness of Smith's part in the affair. But instead of seeing Smith drop money he saw "a little steel ball come rolling out between Smith's feet, and Smith grabbed it and put in his pocket." He was never convinced that this was fiction, and when last heard from insisted that if called into court he would be compelled to stick to his original story in spite of what others claimed to have seen.

Another illustration of the impulse to make a story of the fragments observed is found in the answers to the question, "How did Jones, Brown and Smith look as they passed out?" In the big majority of cases the replies are in harmony with the attitude taken by the witness toward the affair as a whole. If the account is one in which the students appeared only slightly blameworthy, so that the action of the instructor in sending them from the room seemed unreasonably severe, then Jones, Brown, and Smith looked "angry," "injured," or "abused," as they passed out. On the other hand, if it was felt that the actions of the disturbers could not be defended, they looked "embarrassed" or "ashamed." The student, just referred to, who saw Smith do nothing more reprehensible than put into his pocket a little steel ball which rolled down from the scene of disorder, describes him as looking "very angry," while Jones and Brown, with whom he thought the trouble had originated, looked "sheepish."

These results show something more than that a witnesses misses part of what occurs, and that there is danger of positive distortion when the examination of witnesses is delayed until they have time to forget and to pick up items from others. It shows that a witness spontaneously mixes art with observation on the spot, and that an idea somehow having taken possession of him acts as the motif or theme in harmony with which, all unawares, he sketches the occurrence as he believes it to have taken place. And it is important to note that in this work of art items which had their counterpart in reality are not distinguished from those which had not. The witness may be made to feel doubtful about his testimony, but he will yield at the one point no more readily than at the other. When the members of this class in due time learned of the various discrepancies in their testimony, some of the most puzzled individuals were those who claimed to have heard the little steel ball roll along the floor. It now appeared indisputable that no steel ball had fallen to the floor, and yet the experience of its having fallen would not fade for all that. As one of them expressed it later: "It is positively uncanny. I could swear I

heard that little ball bound from step to step as it rolled to the front."

All that has been said is emphasized by the testimony received regarding an incident not yet considered. In addition to the students mentioned so far, the experiment included a fourth, whom we shall call White. He was seated on the opposite side of the room from the rest, and near the front, and his part in the affair was to leave the room the moment the disturbance began. The purpose was to see whether, under cover of the excitement, he could get away unobserved. He performed his part as rehearsed, leaving his seat just as the instructor turned upon the other three and ordered them to go.

How many actually saw him leave the room it is impossible to determine, for when quiet had been restored and the students were beginning to write their accounts of the affair, one of them asked: "Are we to include the fact that White rushed from the room at the beginning of the disturbance?" The instructor replied: "In an affair of this kind it is better that I make no suggestions whatever. Please report what you saw as completely as you can, but report no more."

At this point we get an amount of agreement conspicuously absent elsewhere. Out of seventy-five reports, 64 mention the fact that White left. Now, undoubtedly, a number of the students saw White leave, and in the case of some of these the impression was vivid enough to have remained in the mind. In the case of others, however, whose impression was not so vivid, the chances are that this bit of observation was actually erased from the memory by the intense experience which followed directly on its heels, and that it was revived by the question being asked so soon after the original experience. Had the question not been asked at all the actions of White would in these cases have been represented by one of the blind spots in observation already referred to. This is important, because when such memory-ghosts are conjured up by a question, they come distorted by the form of the inquiry. That is why most of the students not only saw White leave, but saw him "rush," or "hurry," or "bolt," or "make a wild dash" from the room. This suggestion was subtly conveyed to them in the unfortunate question.

But the question did something more than revive faint impressions. It undoubtedly led many to believe that they had observed White's movements when their faces were in fact turned away from him. The students in the immediate zone of the disturbance could hardly have avoided centering their attention upon Jones and Brown just at the time when White left from the other side of the room. In such case they could not have seen him. Still, those seated next to, in front and in back of Jones, Brown, and Smith, all saw White go, observed the manner of his going, and even noted his facial expression.

The importance of these facts is obvious. If it is impossible for a witness to reproduce an occurrence as it took place in his presence, even when asked to do so directly after the occurrence; if it is his very nature to demand consistency in such items as he does get, to the point of rejecting some and creating others; if such a thing as sending three men from a room at the same time may act as a suggestion around which is built up what the witness believes himself to have observed concerning them; what are the chances of arriving at the truth under conditions which often obtain where testimony is taken? In view of a witness's sensitiveness to suggestion, what justification can there be for the "third degree," and what assurance is there of getting at the facts by methods constantly practiced even in law courts, that is, by asking leading questions, by laying down narrow lines beyond which the witness may not stray in his answers, and by acting on the assumption that if a witness contradicts himself he lies, if he lies he is a liar, and if he is a liar, nothing he says is true?

Unless we presume to know the facts before we begin, or are indifferent whether we get at them in the end, the taking of testimony is difficult even under most favorable conditions. And a first step would seem to be a recognition on the part of society that this constitutes a genuine and most vital problem, and one of peculiar niceness and complexity; a problem, moreover, which is not simplified, but enormously complicated when we have hired two lawyers, each called upon to supply a theory as to the "facts in the case," each armed with the ability to brow-beat witnesses and to appeal to the emotions of jurors selected for their "innocence," and each, in the very nature of the case, forced to feel greater concern for victory than for truth. We have done something to make the examination of witnesses humane, but we have done little enough to make it intelligent. Our attitude is describable as a child-like faith that someone is taking care of such difficulties as may be connected with the matter.

Punishment acts as a deterrent to some extent even if it falls like God's rain on the just and the unjust. Consequently, a defective method of determining the guilt or innocence of those accused of anti-social acts may long be accepted as satisfactory. There comes a time, however, when the gulf separating a given institution from the general state of relevant knowledge becomes so wide that the need of adjustment is felt. It is encouraging to believe that we are entering upon this stage; that we shall presently show less of a tendency in the face of crime to indulge in sentimental inebriety—itself a dangerous anti-social attitude—and shall instead give whole-hearted support to the movement which aims to make the taking of testimony more scientific and hence more just.

THE STANDARD OF CHILDREN'S COURT WORK

GEORGE EVERSON¹

I remember once when a boy in the country how close my brother and I came to being taken to the county jail because we threw mud at the mail box of an old woman who came under the ban of our boyhood dislike. We would have gone to jail if my father had not bought the old woman off. This was typical of what might have happened to any child in the country at that time if he transgressed the laws of the land.

The old standard of justice to children could be summed up as follows: The criminal law was there. Children had broken it. They were therefore criminals and must be treated as such. If they were herded in with strumpets, thieves and pickpockets in the morning's catch to be tried before the magistrate it was done because that was the way criminals should be handled. These children were criminals, therefore we must treat them thus. The sacred shell of custom had hardened around our treatment of delinquents. It demanded an eye for an eye—a punishment for an offense—no matter if a life were ruined or a soul blasted in the process. People shook their heads solemnly and maybe they quoted scripture and it never once occurred to them to use Christian common sense.

Today it is unthinkable in our cities at least that a child should be sent to jail. Any magistrate or justice in the Children's Court guilty of such a commitment would call down upon his head such public protest as would effectively bring an end to his official career.

It was only about fifteen years ago that this change in the treatment of delinquent children came about in the public mind. As by common consent in the various parts of the country efforts sprang up to establish children's courts separate from those in which adult criminals were tried. It is difficult to say where the first children's court was organized. The New York Children's Court was established in a building separate from the adult courts in 1902. The children's courts in Chicago, Boston, and in some other cities either antedated this court or followed immediately after.

We heard little about the courts of our largest cities but we heard much about the Children's Court established in Denver because of the genius for publicity possessed by Judge Lindsay, the founder of

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that tribunal. Many great movements grow very slowly because they are not advertised. The children's court movement was fortunate to have one among its numbers with such a knack for publicity as Ben Lindsay possessed. It is through him that the general public has become acquainted with the children's court idea. *Publicity* was his great contribution; but it is not to him that we should look for the genius that has developed the children's court movement along fundamentally scientific lines. It has fallen to the lot of the courts of the great cities, Chicago, New York and Boston particularly, to develop the best standards of children's court work.

For some years the children's courts by the method of trial and error have been correcting and developing the standards of their work. Many experiments have been tried and found wanting, but in it all there has been the guiding genius of common sense and it seems that we have arrived at a fairly good standard of work with the delinquent children and that sound ideals are gradually being established as the goal and aim of our juvenile courts.

It is our purpose to outline the standards which the children's courts have set for themselves and their work.

The first essential for a children's court is that it be entirely separate from adult courts.

In New York City the children's cases were originally tried in the Court of Special Sessions in the same room in which adult criminals were brought. In 1902 the children's court was made a separate part of the Court of Special Sessions and children's trials were heard in a separate building. However, the same judges who tried adult criminals still sat in the children's court, and the children's court was under the administrative control of the adult courts. In 1912 special judges were assigned exclusively to children's court work. In 1915 through legislation fathered by the Committee on Criminal Courts the Juvenile Court was made a separate division under the control of five justices appointed by the mayor to the children's court bench. By this law the children's court is made its own master, responsible only to the five justices who hear only cases of children. It would be difficult to measure the vast improvement in the handling of the work in the children's court brought about by this change.

Other courts that have achieved the same or broader independence have experienced the same change for the better.

The second essential for an effective children's court is largely dependent upon the first. This is the establishment of a method of court administration best suited to *save* rather than punish the child

delinquent. The point of view of the children's courts must be entirely different from the attitude taken relative to adult, hardened criminals. This point of view is well summed up in the New York Penal Code, where it is stated that children are not to be convicted of crime but are to be adjudged delinquent children in need of the care and protection of the state.

These two fundamental principles, a separate children's court and a method of court administration best suited to save the child delinquent, imply the development of an entirely new standard of work and methods of dealing with children.

Let us outline some of the standards that are definitely established.

The first and perhaps the most essential step is the formation of a consistent, judicial policy by a trained judge who has been especially assigned to handle children's cases and children's cases alone. This has been done in the courts of the larger cities.

Judge Hoyt, the presiding justice of the New York Children's Court, perhaps the best and most thoroughly informed children's court justice in the United States, has served in the New York Children's Court for nine years, though during the first four years he had only part time assignment to children's court work. Judge Wilkin of the Brooklyn court has served fourteen years. Some of our cities have not been so fortunate. Politics have entered in to make the tenure of office of justices uncertain. This is particularly true where justices are elective rather than appointive.

In rural communities special justices have not been assigned to children's court work to any considerable degree. In some places, however, movements have been started for the establishment of county juvenile courts with separate judges. The conditions that now exist in most of our rural communities point to the necessity of the establishment of some such county plan in handling the delinquent children in these districts. For instance, we have it on good authority that in Westchester County, New York, there are 153 justices, judges, magistrates and justices of the peace who can dispose of delinquent and dependent children. There are therefore in Westchester County 153 different kinds of children's courts. What this county needs is one judge for all children's cases. Such a judge would be able to formulate a consistent children's court plan and the best public spirit of the county could be organized to help. What is true in Westchester County is true of hundreds of other rural communities.

When a delinquent is brought to the children's court it is not the business of the judge to bring down upon his head the wrath of the community in the form of revenge with the idea to expiate the offense. The child before the judge may be a little tough, bad as a boy or girl can be, but that is no reason why he should be punished instead of saved. The best standards demand that the courts seek a way to start the child back toward normal childhood life. This cannot be done wisely unless the court has before it all of the facts and circumstances that have led to delinquency and a knowledge of the environmental, family and individual life, that have an influence for the worse or that may be used as a potent force for the better. It is essential that the court be provided with means of finding out these facts. In children's court parlance there is need of a preliminary investigation.

An effective standard of work along this line was first developed by the Chicago court under Mr. Henry W. Thurston, who was the first chief probation officer of that court. In the Chicago and New York children's courts and in practically all of the well established courts a preliminary investigation is made in every case of grave delinquency and in every serious case of parental neglect. The courts by long experience have learned what are the most essential facts for the judge to have. The probation department is responsible for making all of these preliminary investigations. With all of the possible knowledge obtainable before him the judge is able to make a sensible, kindly and sound disposition of the case.

It is often found essential to detain the child in the custody of the court while such investigation is being made. It is frequently necessary to detain children for a short time before the case is heard at all. It is therefore necessary to provide a proper place of detention for children awaiting the decision of the courts. Many cities and smaller communities have provided their courts with proper detention homes constructed along most enlightened lines. For the larger cities the Chicago Detention Home stands out prominently. The detention home presided over by Mrs. West at Memphis, Tennessee, has much that is ideal in arrangement for small cities and communities. The detention home in Newark, New Jersey, is the newest and perhaps the most complete of all. In this place of detention, while the probation officer is out in the field finding out the essential facts regarding the environmental and family conditions, the physician and psychologist are doing their part. Here proper physical examination is made and a measure of the child's mental capacity is taken, particularly if there is any doubt as to the child's normality. This, of course, has entailed

the establishment of a clinic, but this clinic is not necessarily elaborate. Where funds are not provided for paid physicians volunteer service is generally obtained.

After all the preliminary work has been done and the child is again brought before the court for final disposition the judge's hands are tied unless adequate means are at his disposal for bringing the child back to normal living. First and most important among these is a trained, devoted and intelligent staff of probation officers to exercise supervision over children who can possibly be brought back to a wholesome life without resort to institutional commitment.

Chicago has a staff of seventy probation officers attached to the Children's Court. New York has sixty.

The probation officer is the good Samaritan of the court. He is a combined employment agency, minister, teacher and friend to the probationer. To be successful he must possess the qualities of tact, generous sympathy, forbearance and kindness with a proper mixture of severity and authority. It is his duty to exercise helpful, constructive and authoritative supervision over the children that are in his charge. Experience has shown that in so far as possible probationers should be placed in charge of probation officers of the same religious faith.

The probation officer returns the child to his home and builds up around him the proper influences for better and more wholesome living. His work is preventive in that he seeks to avoid further lapses into delinquency and is constructive in that he tries to lay the foundations in the child's life for good citizenship.

As the children's courts developed probation became more and more important until now it is recognized to be the surest as well as the most economical means of reformation.

Judge Hoyt, presiding justice of the New York Children's Court, has often stated that it is the consistent policy of the court through probation to save the child from institutional commitment in every possible case. This is the consistent policy of all our best courts. Probation is the hand of the court extended to help the children along the road to better things and saves them from institutional life. It is used to the fullest extent in the courts that are properly performing the work for which they were established.

Of course there are cases where the interest of the community and of other children in the neighborhood, as well as the interest of the individual, warrant institutional commitment. In such cases the work

of the court goes for naught if there are not properly equipped institutions for these more incorrigible delinquents.

If the children's court work is held to a high standard the judge must know about the institutions to which he commits. He must have clearly in his mind the essential qualities of each institution that makes it valuable as a salvage station for particular classes of delinquent children. The judge, therefore, must have time to visit these institutions to confer with the managers. He must know what they stand for and the methods they use in their reformatory work. Institutions and the children's court are very closely related and to bring them both to the standard they must thoroughly understand each other's ideals and their policies must not conflict. In some instances the law provides for visitation of institutions by the justices.

The children's court must be housed in a building properly equipped for the business in hand. The new Children's Court Building for Manhattan in New York City is perhaps the best and most thoroughly equipped of any. It was dedicated about two years ago. It has an air of substantial wholesomeness and conveys to those who frequent it a feeling of the dignity and kindness of justice. There are pleasant, sunny, sanitary rooms for the detention of children during the day while waiting the court's action. There is a nursery for the smaller children and a rest room for the distracted mothers who often become hysterical and need a place in which to be alone and quiet. Provisions are made for a waiting room separate from the court room where people having business with the court can wait until their cases are called. The court room itself is small and in so far as is compatible with public policy the general public is excluded and only those directly interested in the case in hand are allowed in the court room itself. This is necessary to protect the children from unnecessary shame in some cases and to prevent the satisfaction of brazen pride in others that is occasioned by a baldly public hearing.

Proper quarters are provided for the probation department. There is an adequate complaint room and rooms for the clerical staff of the court and for the proper filing of records.

One of the most essential parts of the administration of our most progressive courts and yet one of the most difficult to obtain is a proper system of records. Even after it is once established it is most difficult to keep it up to standard from month to month. The probation records of individual cases are the most important. These records are very full and complete and give a clear picture of the case as it was found by the court and all the action taken by the court and its repre-

sentatives of the probation department in the reformatory process which is bringing the child back to normal life.

Almost as essential as the record of the individual case is the report of the court to the community. The children's court is the community's court. It is its representative in handling delinquent children and the community has the right to know what is being done. Information of the court's activities is best given to the public through the medium of the annual report. Children's courts are recognizing this and there are now several scientific, interestingly written reports published. There is, however, yet much to be desired in the way of informing the public of the work of the court.

After the children's court is well started there is no other public activity which receives more attention from kindly disposed members of the community. The spectacle of a delinquent child arraigned before the bar of justice has a universal and telling appeal to the kind-hearted, and often even to those whom we consider to be hard-hearted. As a result in every children's court there appear many groups of volunteer workers and many individuals who want to help. Unfortunately, the zeal to do good and to be kind to those in misfortune many times brings with it a sort of dogmatism or stubbornness and as a general thing these volunteers all have their particular ways of doing things. Their zeal to help often leads them to think that anyone who opposes them in method is working against the interest of those whom they are trying to help. Therefore unless the status of the volunteer worker is pretty well established, and unless the judge and the probation officers exercise the greatest amount of tact, friction is bound to result. This kindly disposed person becomes suspicious of that one and there is often danger of all of them feeling that the court is not accepting their help with the grace that it should.

The work of these volunteers is essential to the proper development of the court and its relation to the community and to the salvation of the children who come to the court. The court needs them and must have their help. The question then is how *best* to use their services. In the well organized court the status of the volunteer worker is pretty well fixed. Here the standard of work requires that the court must have the authority in the plan for reformation. The probation officer as the representative of the court must be the responsible person and the volunteer workers must co-operate with the probation officer. It therefore becomes the duty of the probation officers to use the help of the volunteer workers in every possible way in forming the plan for handling the case and in carrying out this plan once

it is decided upon. Furthermore, the volume of the business of the court often requires the probation officer to relinquish supervision over children before the process of rehabilitation is complete. When the probation officer thus relinquishes supervision the volunteer must step in and take responsibility. In New York City this follow-up work is the principal field of activity of the Big Brothers and Big Sisters in their work with the court.

Not only does the children's court and its probation department find it necessary to co-operate with volunteer workers, but it is essential to their work that they enlist all the organized agencies of the community to help them in preventive and constructive work. First among these agencies are the schools. No good probation work can be done with a child in school unless, as is the case in New York, the probation officer has the confidence and active help of the child's teacher and of the school principal. The best standard of work is reached where from time to time conferences of school teachers and probation officers are held.

As we have said before, it is preferable if the probation officer in charge of a child is of the same religious faith as the child's family. In New York this preference is stated in the law. This enables the probation officer to have the co-operation of the church. The church and religious influences ought to be the most potent factors in reformation. The religious appeal is perhaps the strongest that can be made in the formation of better ideals and in implanting in the child's life the deep and abiding principles of right living. The probation officer worthy of the name at all times seeks the help of the priest, the minister or the rabbi, as the religion may be. Church clubs and the Sunday School are used to the utmost. The help of social settlements and other community centers are enlisted in the same manner. The juvenile delinquent is a problem of the whole community and our best courts are bringing all of the agencies of the community to the help of the boys and girls who need it.

This leads us to the best work that is being done, that is, the preventive work. The children's court is a sort of thermometer registering the goodness or badness of the community. When evil influences are creeping into a neighborhood the results are registered in the children's court. It is therefore in a peculiar position in its relation to the community. If the conditions that are reflected there are properly brought before the community the children's court can be made the most valuable agency for preventive work. The ills of the community are perhaps best diagnosed here, and here without question

should begin the movement for preventive work. The judges and the probation officers in our best developed children's courts have found this out and spend no little part of their time and their thought in plans and activities for preventive work.

It is a stinging commentary on our community life that delinquent children should be brought into our courts in such great numbers. It is imperative for the best community development that delinquency should decrease instead of increase. The children's courts of many communities are developing largely this preventive side of their work. If the whole community falls into line and helps, the delinquency should gradually decrease in volume and in the seriousness of the cases.

Social workers in the field of rehabilitation and relief of poverty find that intelligent, constructive case work is the essential thing. The children's court has come to the same conclusion in the reformation of the delinquent children. The probation officer very seldom has the child alone on probation, but must work with the whole family. Some of the best case work that is being done by any charitable society or philanthropic or public institution is being accomplished in some of our best children's courts.

A recent book has been written by Dr. William Healy, formerly Director of the Psychopathic Institute of the Chicago Children's Court. He has called his book, "The Individual Delinquent." The title is most significant. The juvenile courts are coming to feel that each case coming before them must be treated individually. There is no set rule to go by. Each case is a different problem. There is no hard and fast rule as to when a child should be committed or when he should be placed on probation.

The infinite patience of some of our courts and their probation officers in their help of the stumbling, erring, misguided children recalls to our minds the injunction of the Great Master of love and helpfulness, when asked how many times we should forgive, replied: "Seventy times seven." In the life of each child there are an infinite number of different influences that must be studied and worked with and overcome. The best standard of children's court work recognizes these individual differences, studies them and treats each case as a special charge to be worked with in a special way. Among the children who come before the courts each has a personality for development or for ruin. It takes patience, persistence, sympathy and kindly helpfulness to make the best of the misguided life. It requires the best thought of all of us to in any way approach a proper standard for children's court work that will make the most of the infinite possibilities that are found in the lives of the children that are placed in the custody of the court.

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER AND WILLIAM G. HALE

ACCOMPLICES.

People v. Keseling, Calif. 170 Pac. 627.

Witnesses one of whom, employed by the state for that purpose, was treated by defendant and the other of whom paid for such treatment, were not "accomplices" to the crime of practicing dentistry without a license under Pen. Code, sec. 1111, as amended by St. 1915, p. 760, defining an accomplice as one who is liable to prosecution for the identical offense charged against the defendant, since when the commission of a crime by one person involves the co-operation of another person, the latter becomes an accomplice only in the event that his co-operation in the commission of the crime is corrupt.

Even though such witnesses were feigned accomplices, still their testimony needed no corroboration as the uncorroborated testimony of one who under the direction of officers of the law feigns complicity in the commission of a crime merely for the purpose of detecting and prosecuting the perpetrators thereof will support a conviction.

CONSTITUTIONAL LAW.

Mutart v. Pratt, Warden, Utah 170 Pac. 67. *Validity of indeterminate sentence law.*

Indeterminate sentence law (Laws, 1913, c. 100) does not violate Const., art. 5, sec. 1, prohibiting one department of the government from encroaching on the powers of another, because transferring the power of fixing duration of sentences from trial courts to an executive body. McCarty, J., dissenting.

Arver v. United States, 38 Sup. Ct. Repr. 159. *Validity of Selective Draft Law.*

Under Const., art. 1, sec. 8, authorizing Congress to declare war, to raise and support armies, and to make rules for the government and regulation of the land and naval forces, and to make all laws necessary and proper for carrying the foregoing powers into execution, and article 6, providing that the Constitution and laws of the United States made in pursuance thereof shall be the supreme law of the land, Congress has power to raise armies by conscription, and such power is not denied by reason of the fact that under the Constitution as originally framed state citizenship was primary, and United States citizenship but derivative and dependent thereon, or by the fact that, prior to the Constitution, the state authority over the militia embraced every citizen, and therefore Act, May 18, 1917, c. 15, providing for raising an army by means of a selective draft, is valid.

Act, May 18, 1917, c. 15, providing for the raising of an army by means of a selective draft, is not void as delegating federal powers to state officials because of some of its administrative features.

Act, May 18, 1917, c. 15, providing for raising an army by a selective draft, is not void, as vesting administrative officers with legislative discretion.

Act, May 18, 1917, c. 15, providing for raising an army by selective draft, is not void, as conferring judicial power on administrative officers.

Act, May 18, 1917, c. 15, providing for the raising of an army by means of a selective draft, and exempting from the draft regular or duly ordained ministers of religion and theological students under prescribed conditions, and also relieving from military service, other than service of a non-combatant character, members of religious sects whose tenets exclude the moral right to engage in war, does not violate Const., Amend. 1, providing that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Act, May 18, 1917, c. 15, providing for raising an army by means of a selective draft, does not impose involuntary servitude, in violation of Const. Amend. 13.

CONSPIRACY.

Emma Goldman v. United States, 38 Sup. Ct. Repr. 166. *Conspiracy to induce disobedience to Selective Draft Law.*

Under Criminal Code (Act, March 4, 1909, c. 321), sec. 37, 35 Stat. 1096 (Comp. St., 1916, sec. 10201), sec. 37, providing that if two or more persons conspire to commit any offense against the United States, and one or more of them do any act to effect the object of the conspiracy, each of the parties shall be fined or imprisoned, or both, an unlawful conspiracy and the doing of overt acts in furtherance of the conspiracy is of itself inherently and substantively a punishable crime, irrespective of whether the result of the conspiracy has been to accomplish its illegal end.

EVIDENCE.

Greer v. United States, 38 Sup. Ct. Repr. 209. *Presumption of good character.*

On a criminal trial, there is no presumption of defendant's good character, since a presumption upon a matter of fact, when not merely a disguise for some other principle, is based on common experience, showing the fact to be so generally true that courts may notice the truth, and it is not common experience that the character of most people indicted by a grand jury is good.

Mr. Justice McKenna dissenting.

JURY.

Ruthenberg v. United States. 38 Sup. Ct. Repr. 168.

Socialists on trial for violations of the Selective Draft Law (Act May 18, 1917, c. 15), were not entitled, in examining jurors, to inquire whether they distinguished between Socialists and anarchists.

Socialists on trial for criminal offenses were denied no constitutional or statutory rights because the grand and trial juries were composed exclusively of members of other political parties and of property owners.

LIBEL.

State v. Fish, N. J. 102 Atl. 378. *Qualified privilege—Communication to electors.*

On an indictment for libel in informing the electorate of supposed facts concerning the previous record of the candidate in another public capacity, the defendant is not required to prove both the truth and the bona fides of the communication.

A communication relating to the fitness of a candidate for elective public office, made in good faith by one elector to other electors, for the purpose of enabling them to judge as to the propriety of voting for the candidate, is within the doctrine of qualified privilege.

Walker, Ch., and Heppenheimer and Williams, JJ., dissenting.

TRIAL.

State v. Snider, W. Va. 94 S. E. 981. *Right of accused to be present at all stages of felony trial.*

Where, in the progress of the trial of a felony case, the judge and the attorneys retire from the courtroom in which the trial is conducted to an ante-room, leaving the accused and the jury in the courtroom, and in such ante-room, and in the absence of the accused, an objection to the introduction of evidence is argued by the attorneys and passed upon by the judge, the accused is entitled to a new trial by reason of deprivation of his legal right to be personally present at every stage of his trial. A like result flows from such retirement by the judge, attorneys, and a witness, and interrogation of the witness, in the absence of the accused, after an objection to a question propounded to him has been sustained in the presence of the accused.

State v. Harris, Wash. 169 Pac. 971. *Separation of mixed jury.*

That during intermissions permitted by the court, and the noon recess, the woman juror was permitted to retire to the judge's chambers, would not warrant a new trial, where the ingress to the room remained closed under the supervision of duly sworn bailiffs, and no conversation was had by any one with the juror, and the 11 men jurors retired to the jury room during such periods; the statute making women eligible to jury service being in itself a change in the existing system relating to the separation of jurors broadening the meaning to be given to the term "separate."

ASSAULT BY HUSBAND UPON WIFE..

State v. Lankford (102 Atlantic Reports 63).

A husband, knowing that he is infected with a venereal disease, who, concealing the fact from his wife, communicates that disease to her is guilty of an assault and battery.

The problem involved, while not of great importance practically, because of the very few cases which actually get into the courts, raises nevertheless an interesting theoretical question: does the female by consenting to an act of sexual intercourse consent to the contact with her body of the infectious virus.

The courts in the two earliest cases involving this point and also Sherwood J. in a dissenting opinion in a more recent case (*State v. Marcks*, 43 S. W. 1097 (1898)) did not regard this as the essential question, but proceeded upon the general ground that the defendant's fraud in concealing the fact that he was suffering from a venereal disease negatived the consent of the female, thus making him liable for an assault. *Reg. v. Bennet*, 4 Fos. & Fin. 1105 (1866) where the defendant was convicted of an assault, while diseased, upon his niece. *Reg. v. Sinclair*, 13 Cox C. C. 28 (1867), where the facts were similar, the female being twelve years of age.

The doctrine laid down in these two latter cases was, however, questioned and, in fact, differed from by the court in *Heggarty v. Shine* 14 Cox C. C. 128

and was actually overruled by the leading case of *Reg. v. Clarence* 22 Q. B. Div. 23 in which case it was held that a husband could not be convicted of an assault upon his wife by communicating to her a venereal disease from which he knew he was suffering, if she consented to the act of intercourse. The court vigorously attacked the theory upon which the courts in the two preceding cases had proceeded, namely, that fraud vitiates consent. Wills J. saying: "That consent obtained by fraud is no consent at all is not true as a general proposition either in fact or in law." In the face of this decision, however, in *Trammell v. Vaughn* 51 L. R. A. 857 which was an action for breach of promise where the defendant alleged as an excuse for refusing to marry the fact that he had without any fault subsequently contracted a venereal disease, Marshall J. cites *Reg. v. Bennet*, *Reg. v. Sinclair* and *State v. Marcks* (supra) with approval, saying that to have had intercourse under such circumstances would have been an assault and therefore unlawful.

The principle that fraud does not negative consent as a question of fact (although it may sometimes affect the legal consequences of consent) is a well established principle and yet it is submitted that the results arrived at in *Reg. v. Bennet* etc. (supra) are correct and should be supported upon principle, although upon other grounds. This has been suggested by Hawkins J. who wrote a dissenting opinion in *Reg. v. Clarence*: "if a person, having a privilege of which he may avail himself or not at his will and pleasure cannot exercise it without at the same time doing something not included in this privilege, and which is harmful and dangerous to another, he must either forego his privilege, or take the consequences of his unlawful conduct."

If it is true that fraud does not negative consent when once given, it is equally true that consent, being a question of mental attitude does not exist where things additional to that for which consent was originally given, are either given or done. (See F. H. Beale "Consent in the Criminal Law 8 H. L. Review 317) and so in *Com. v. Stratton* 114 Mass. 303 it was held that there was no consent on the part of the female to take a poisonous powder which had been put into a fig by the defendant and given to her, and for the resulting sickness the defendant was held liable for an assault.

It would seem, therefore, that while fraud does not negative consent when once given, that in cases like the present there was never consent to the contact of infectious disease germs with the body. Consent to the act of intercourse and consent to the contact with the disease germs is consent with regard to two essentially different things and consent to the one no more implies consent to the other than in *Com. v. Stratton* consent to take the figs implied consent to take the poison.

Stanford University, Calif.

HAROLD SHEPHERD.

State of Louisiana v. Walter L. Daniel, By Mr. Justice O'Neill. *Concealed Weapons*.

Appeal from the Sixth Judicial District Court, Parish of Moorehouse—Ben C. Dawkins, Judge.

* * * * *

The defendant was prosecuted for carrying concealed weapons. With the view of invoking the provision of Section 974 of the Revised Statutes, authorizing the judge to sentence any person convicted the second or third time of

the same offense to double or triple the penalty imposed by law, it was alleged in the bill of information that the defendant had already been convicted twice of the offense of carrying concealed weapons. The date of each of the previous convictions was stated in the bill of information, and it was alleged that the purpose was to inform the defendant of the intention to have him sentenced, in the event of the third conviction, to double or triple the penalty imposed by the statute forbidding the carrying of concealed weapons.

The defendant filed a motion to quash the bill of information, on the ground that, by charging the two previous offenses and convictions, for the purpose of showing an aggravation of the third offense charged, the bill of information charged the commission of more than one crime, and was invalid for duplicity. He alleged that the charging of the previous offenses and convictions would have the effect of prejudicing his defense of the prosecution for the offense for which he had not been convicted or tried.

The motion to quash the bill of information was overruled, and a bill of exceptions was reserved to the ruling. The defendant was tried and convicted and was sentenced to pay a fine of \$500 and the costs of the prosecution and to serve six months imprisonment in the parish jail, subject to work on the public roads, and, in default of his paying the fine and costs, to serve an additional term of six months imprisonment in the parish jail subject to road duty, the terms of imprisonment not to be concurrent. The defendant has appealed from the conviction and sentence, and, in addition to the complaints urged in the bills of exception, complains that the sentence of both fine and imprisonment was not authorized by law.

In support of his motion to quash the bill of information, the learned counsel for the defendant relies upon the decision in *State v. Hudson*, 32 La. Ann. 1052, where it was held that a previous conviction for a similar offense should not be charged in the indictment, but that, after verdict and before sentence to double the penalty under Section 974 of the Revised Statutes, the prisoner should be allowed to show cause, if any he has, why the increased punishment should not be inflicted on account of the previous conviction. That decision was expressly overruled in the case of *State v. Compagno*, 125 La. 672, 51 South 681; and we are not ready to reinstate the doctrine. It was based upon a consideration that can have no application to a prosecution for a misdemeanor, which is tried before the judge without a jury, that is, that the charging of a previous offense and conviction might prejudice the defendant before the jury. We adhere to the doctrine of the later decision, *State v. Compagno*, *supra*.

Another bill of exception was reserved to the ruling of the district judge permitting the introduction in evidence on behalf of the State of other evidence of the previous convictions than a judgment of conviction. The contention of the defendant's counsel was and is that the judgments of conviction of the first and second offense being the best evidence thereof, the minutes of the court showing that the defendant had been twice previously convicted and sentenced was only secondary evidence. The judge overruled the objection because, the offense being a misdemeanor, no formal judgment and conviction had been signed or written. The only evidence of the previous convictions was contained in the minutes of the court, which were introduced in evidence on the trial of this prosecution. Our opinion is that the ruling was correct.

There appears in the record another bill of exceptions, which has not been urged on appeal and which we presume has been abandoned. It refers to a request of the defendant's counsel that the trial judge charged or maintained certain legal propositions. We find no merit in the bill of exceptions, because the judge did, in effect, sustain the legal propositions submitted by the defendant's counsel.

We find no error in the conviction; but we are of the opinion that there was no authority for imposing upon the defendant the penalty of both fine and imprisonment.

Section 974 R. S. provides that the judge shall have the power to sentence any person who may be convicted for a second or third offense to double or triple the penalty imposed by law. The penalty imposed by law, for carrying concealed weapons, is a fine or imprisonment, the fine to be not less than \$100 nor more than \$500, and the imprisonment to be not less than 60 days nor more than 6 months in the parish prison. See Act No. 43 of 1908, p. 58. There is no authority for imposing the penalty of both fine and imprisonment for the carrying of concealed weapons. Following the precedent established in *State v. Anderson*, 125 La. 779, 51 South. 846, and approved in the case of *State v. Vickie McCue*, No. 22,351, decided this day, we are constrained to annul and set aside the sentence imposed in this case, and to remand the case to the district court, in order that the defendant may be sentenced according to law.

For the reasons assigned, the judgment convicting the defendant is affirmed, but the sentence imposed upon him is annulled and set aside, and this case is remanded to the district court in order that the defendant may be sentenced according to law.

SYLLABUS

(1) In order to convict the defendant of the aggravated offense of repeating the commission of the same misdemeanor, and to give the court authority to impose double or triple the penalty imposed by law for the first offense, it is proper and necessary to charge the previous offenses and convictions in the bill of indictment or information.

(2) There being no written judgment of conviction of a misdemeanor, the minutes of the court showing the conviction and sentence furnish the best evidence of the fact and are admissible in evidence in a subsequent prosecution, to give the court authority to impose double or triple the penalty imposed by law for the first offense.

(3) The statute declaring the penalty for carrying concealed weapons to be fine or imprisonment in the parish jail does not give the court authority to impose both fine and imprisonment.

W. O. HART, *New Orleans.*

INTOXICATING LIQUORS.

United States v. Mitchell, 245 Fed. 601. *Interstate "Transportation," "Commerce."*

The Act of Congress, March 3, 1917, C. 162, 39 Stat. 1058, 1069, making appropriations for the service of the Post Office Department, declares in section 5, after providing penalties for use of mails in advertising or soliciting orders for liquor in territory where by the local laws it is unlawful to so advertise or solicit liquor orders, that whosoever shall order, purchase, or cause

intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal and mechanical purposes, into any state or territory, the laws of which state or territory prohibit the manufacture or sale therein of intoxicating liquors, shall be punished, provided that nothing therein shall authorize a shipment of liquor into any state contrary to the laws of such state. The accused carried as personal baggage one quart of intoxicating liquor from Kentucky into the state of West Virginia, which liquor was intended for his own use. Held, that, as "Commerce" is defined as the exchange of merchandise on a large scale between different places or communities, or, as extended trade or traffic, the accused was not guilty of a violation of the Act of March 3, 1917; his transportation of liquors into the state of West Virginia not amounting to interstate commerce, the word "commerce" not being synonymous with "transportation."

"MILITARY FORCES OF THE UNITED STATES."

United States v. Sugarman, 245 Fed. 604. *Attempt to cause insubordination.*

The defendant was indicted under the Act of June 15, 1917, section 3, providing that, "Whoever, when the United States is at war, shall wilfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States * * * shall be punished." He was charged with urging young men, who had been registered under the Act of Congress and who had received their serial numbers not to report for military duty. On a motion for a directed verdict, the question was presented, whether these men were "in the military or naval forces of the United States." Held, they were. The court said: "Considering * * * the broad purposes of the Act of May 18, 1917 [the Selective Draft Act], considering the evils that were intended to be met by section 3 thereof, considering the language of the section, [of the Act of June 15, 1917], I am of the opinion that the words 'military forces' therein should be given a broad, rather than a narrow, meaning, and should be held to mean, not merely the men that are in active military service, but also men who had registered and had received their serial numbers from Washington, and that is as far as it is necessary to hold in this particular case."

VARIANCE.

State v. Spahr. Variance as to instrument used in homicide.

The indictment charged that the defendant killed the victim by striking him with a shovel. The proof was to the effect that he struck him with a brick or stone. It was held that this did not constitute a variance. "In general, it may be said that although an indictment for murder alleges that the act was done with a specified instrument, it is not necessary to prove that the act was done with that particular instrument. If the proof shows that the crime was committed through other means, it is sufficient if the nature of the violence and the kind of injury resulting in death is the same." In the case in hand the "nature of the attack * * * is essentially the same."

House v. State, 117 N. E. 647 (Ind.) *Conviction of offense different from that charged.*

The indictment charged the accused with kidnapping. He was convicted of assault and battery. Judgment reversed. The offense of assault and battery

is not included in the offense of kidnapping. The rule is that to be included in the greater offense, the lesser offense must be such that it is *impossible* to commit the greater without having first committed the latter. The offense of kidnapping may be established without proof of touching, hence without necessarily proving a battery.

Wong Goon Let v. United States, 245 Fed. 745. *Adultery*.

The defendant asserts a fatal variance between the allegations of the indictment and the evidence, in that the indictment alleged that the defendant was married to Wuai Kam Let, while the proof showed that the wife's name was Foo Kwai Kim. Held, as there was evidence that at the time of the offense charged the defendant was lawfully married to a woman other than his alleged paramour, the variance between the name of his wife as pleaded in the indictment and as shown at the trial was immaterial.

PRIVATE DETECTIVES.

Negligently Alienated Wife's Affections.

A husband, who suspected his wife's faithfulness, employed a detective agency, which undertook to shadow the suspected woman. But the agency, so the husband alleged, got its wires crossed and proceeded to shadow another woman, by mistake. Conduct very unbecoming a dutiful wife was reported to the suspicious husband, whereat he charged his wife with being guilty of most reprehensible conduct, whereof she was entirely innocent, wherefore her affections were forever alienated; therefore she left him, wherein he was damaged for the negligent act of the sleuths. The Supreme Court of Minnesota said that, to render an intermeddler liable for alienating the wife's affections, the act must have been purposely and knowingly done, and mere negligent conduct was not actionable. *Lilligren v. William J. Burns International Detective Agency*, 160 Northwestern Reporter, 203.

This is a subject which demands immediate reform and substantial protection to the citizens of the community. In Georgia, every private detective must report his findings every day to the chief of police in whose district he is conducting his investigations; the authorities are thus kept informed and the opportunity for concealing crime is thus minimized. The citizen is in that way protected from encroachments upon his person and character; in Japan "shadowing a person without just cause" is a crime; unskilful detectives, "chump coppers," and half-educated spies are a menace to the community and should be eradicated as a "moral cancer." With all due respect to the Minnesota Supreme Court I question the soundness and good law of that decision; people who hold themselves out by their "advertisement as possessing unusual skill," should be held accountable for negligence. The court ought to know that they charge good prices for "skilful detective work"; expert services demand "extra pay" and should be held legally liable for acts of bungling ignorance. Some states hold that private detectives are liable in tort to the person damaged by reason of negligence or lack of skill; to hold otherwise would be to allow individuals to cash their own ignorance and to place skill on the same level with ignorance and illiteracy.

JOSEPH MATTHEW SULLIVAN, *Boston*.

FREE TRANSPORTATION OF POLICE.

The provision of N. J. Act of May 26, 1912 (Pamph. Laws, p. 235) requiring street railway companies to grant free transportation to police officers when

in uniform or on duty, is held a constitutional exercise by the legislature of its police power in *State v. Sutton*, 87 N. J. L. 192, 94 Atl. 788, Ann. Cas. 1917C, 91, L.R.A.1917E, 1176.

The object expressed by the language of the statute in question being one that the legislature may lawfully accomplish under its police power, the court further refused to declare the statute to be unconstitutional upon the ground that the purpose of the legislature was to exact from the public utilities a money tribute in violation of constitutional principles: First, because the purpose of the legislature is known to the courts only in so far as it appears in the object expressed by the language of its enactment; and, second, because, in dealing with the language of an enactment, the courts adopt, if possible, that construction which will sustain the statute as a valid act of legislation.

In *Sutton v. New Jersey*, 244 U. S. 258, 61 L. ed. 1117, P.U.R.1917E, 682, 37 Sup. Ct. Rep. 508, the United States Supreme Court, in affirming the judgment of the New Jersey court of appeals, above referred to, said: "Freedom to come and go upon the street cars without the obstacle or discouragement incident to payment of fares may well have been deemed by the legislature essential to efficient and pervasive performance of the police duty. Increased protection may thereby inure to both the company and the general public without imposing upon the former an appreciable burden. If any evidence of the reasonableness of the provision were needed, it could be found in the fact that such officers had been voluntarily carried free by the company and its predecessors for at least eighteen years prior to July 4, 1910, when the practice was prohibited by the Public Utilities Act." The Supreme Court also held specifically that the requirement that city detectives not in uniform be carried free on the street cars when in the discharge of their duties was not an arbitrary or unreasonable exercise of the police power.

JOSEPH MATTHEW SULLIVAN, *Boston, Mass.*

NOTES AND ABSTRACTS

ANTHROPOLOGY—PSYCHOLOGY—MEDICO-LEGAL

Skech of Proposals by the Illinois State Board of Commissioners of Public Welfare, looking towards a comprehensive program for recodification of the laws of the State on Public Welfare. The Civil Administrative Code of Illinois contains the following outline of the powers and duties of the Board of Commissioners of Public Welfare:

Section 8, Article 1.

"To consider and study the entire field; to advise the executive officers of the department upon their request; to recommend, on its own initiative, policies and practices, which recommendations the executive officers of the department shall duly consider, and to give advice or make recommendations to the Governor and the General Assembly when so requested or on its own initiative."

Pursuant to this, the Department of Public Welfare has requested this Board to prepare a comprehensive program of welfare work throughout the state, looking towards an extensive revision of the statutes on numerous subjects. This at once opens the practical question whether any specific subjects which might be presented are not so inter-related with the whole that an intensive study of the entire code will be involved and therefore whether we should not, as the law specifies, "*study and give advice*" as requested or on our own initiative, "*over the whole field*," whether anything short of a comprehensive study of all the inter-related subjects of public welfare would not result in merely general and perfunctory recommendations such as sometimes characterize non-executive boards charged with functions only of investigation and advice.

The Department of Public Welfare with its director, assistant director, alienist, criminologist and superintendents of pardons and paroles, prisons and charities is perhaps in a stronger position for effective work than similar boards in most of the other states; but is handicapped by rudimentary laws, many of which, notably those on insanity and mental responsibility, were laid down in the dark ages of public welfare seventy years ago and therefore are not responsive to the public conscience of the present day, not responsive to established principles of sociology on a wide range of subjects. Among these are three which at the outset call for a broad consideration of an entire administrative code, as it pertains to public welfare.

1. Revision of Court Procedure.
2. Industrialization of Public Institutions.
3. Farm Colonies.

1. *Court Procedure*: The correlation of crime and disease, hitherto little appreciated, gives rise to a pressing need for constructive legislation on criminal court procedure, a subject in which medicine, through the psychopathic laboratory, is pointing the way to the legislator. Under the old procedure a so-called criminal insane person who has committed an act of violence, is subjected to observation of weeks or months by some officer, who then guesses at his degree of responsibility and at the relative danger or safety of permitting him to be at large. One prisoner, who is mentally normal and otherwise qualified for parole, is detained for years because no scientific facts are available on which he can be released. Another, perchance, a paranoiac homicide, a subject of dementia praecox, or a mental defective, and therefore dangerous not only now, but as

long as he may live, is paroled because no scientific facts are available on which he can be detained. Today a trained expert frequently can apply scientific tests to a psychopathic subject, which in two hours will tell him accurately more than possibly could be learned by the older methods in the life time of the individual. I am sure that the expert member of our Board, Dr. Norbury, will say that those who drafted criminal laws seventy years ago would be about as much at home in the face of modern psychopathic science as primitive man, driven from his raft, would be in the engine room of a dreadnought.

Let us illustrate by a case or two: Recently a man, born twenty years ago, wanted chocolate creams and obtained 50 cents worth of them by throwing a brickbat through a hundred-dollar plate glass window. He was sent to prison for a year and when released was found on psychopathic test to be mentally not twenty, but eight years old. Another boy of eighteen years was driving a horse diagonally across the street contrary to police regulations. He made some offensive remark to the officer, who attempted to stop him; whereupon the officer attacked him with his billy, beat him up and dragged him before a judge, who promptly gave him a year in prison for resisting an officer in the discharge of his duty: this boy, on psychopathic test, was rated mentally seven years old, and on that basis, instead of being a criminal, was a mental defective who had shown extraordinary initiative in having driven a horse at all.

I adapt some of the following from a paper read by Judge Harry Olson before the New York State Bar Association in 1917. Under antiquated laws our courts are making little or no distinction between the mentally irresponsible and the mentally responsible, between the criminal or normal or nearly normal mentality and the irresponsible law breaker. Consider the appalling record of assassinations and attempted homicides by the feeble-minded, paranoiacs, subjects of dementia praecox, and other insane individuals. The law, without much discrimination, provides for punishment, for vindication, rather than restraint for the protection of society.

In the fierce competition of modern life these people fail and their instincts, unrestrained by normal resistance, impose penalties on them which were intended for the normal. They rather should be subjects for diagnosis in the psychopathic clinic and for our consideration and care. They should be segregated and restrained; they are not fit subjects for the gallows or the prison. The farm colony, to be mentioned later, offers the one solution for the treatment of many of the mentally abnormal who get into our courts. In such colonies the human by-product can be utilized to its own advantage; even as the material by-product is utilized in the industrial and commercial world. These unfortunate people, instead of growing up to be destroyers of society, should be identified at the earliest possible moment and given, in early years, the only training which possibly can help them. Especially those of higher intelligence, who, in childhood, are difficult to recognize except by the expert, should be sorted out in our schools and special methods of training applied to them either in farm colonies or in other suitable environment.

At one time in England 165 crimes were punishable by hanging.

Now the opposite extreme from the standpoint of the community is even more deadly, for in giving to the mentally unsound license to commit crimes and reproduce their kind, it results in the destruction of society. Medical science has advanced; the law in America has lagged behind. Sweden regulated judicial

procedure with relation to persons of doubtful sanity in 1826. Why should the State of Illinois wait until 1926?

The rediscovery of Mendel's law has forced the alienist and the psychologist to recognize the indelible factor of heredity in juvenile and adult delinquency. We do not fail to make a just and liberal estimate of the recognized value of social environment, but in this case of the incurable psychopathic individual, subject of dementia praecox, paranoia or feeble-mindedness, it is clear that we cannot continue to leave the biological facts out of account. In his own interest and in the interest of society we must cease to allow him unlimited license in arson, murder and rape. Bad heredity may create bad environment at once, but ages of bad environment may not create bad heredity. The neurosis of the congenitally defective being permanent, these people should be restrained from procreation and from deeds of violence.

Some will urge that in order to care for these cases our institutions must be multiplied many fold, but this only clinches the argument: the greater the number at large the greater the immediate peril to society; the greater the remote peril to the race. The number of the mentally unsound may be ever so great, and yet, under a system of scientific industrialization, they may be able to relieve the state of much of the burden incident to their care. Others will urge that psychopathic tests are fallacious, that presidents of colleges, statesmen, professors, generals and admirals sometimes cannot meet them, that sometimes even they register a mentality of only ten or twelve years. This may be owing to the fault of the psychopathic expert or may be a demonstration of the accuracy of the tests. The following case is one in which the tests were not faulty: A young physician, who had had a few years of training in one of the great psychopathic clinics of Europe, passing through England visited a physician of deserved international reputation, who invited him to examine a psychopathic case. On the conclusion of the usual tests he said:

"This boy is utterly irresponsible; he is very prone to commit acts of violence and should be segregated."

The neurotic mother almost swooned. Whereupon the physician put his sympathetic hand on her shoulder and said:

"My dear, this boy will do nothing of the kind. Our young friend here is fresh from the laboratory and charged with the enthusiasm of youth."

At eleven o'clock that night our enthusiastic "young friend" was awakened in his hotel by the physician, who said:

"That boy cut his throat at two o'clock tonight. I want to apologize and I want to know something more about this modern psychopathic development." The conversation continued until four o'clock in the morning.

The laws in Illinois in some respects, notably those which have designated the state alienist, state criminologist, superintendent of prisons and other heads of departments already are possibly in advance of the laws of any other state, but the statutes on insanity and mental responsibility under which these departments have to work were laid down as above stated in 1848 and even with some occasional changes are now, in the opinion of experts, obsolete and especially so in their failure to square themselves with our present knowledge and with the public conscience on the correlation of crime and disease. In some of the more advanced countries of Europe, the laws of which we might study with profit, it is demanded by statutory enactment that all public welfare laws be

systematically reviewed, and, as required by changing conditions, recodified every ten years. During the seventy years which have passed since our laws on mental responsibility were framed, perhaps the public welfare of Illinois might have profited by such a provision.

Illinois pays for its charitable institutions 28.1 per cent of the total expenditure of the state; for the neurotic and insane group, 21.8 per cent. In addition to this, the cost of arrests and the maintenance of penal institutions in Illinois in one year, exclusive of court expenditures, is \$12,000,000. Can there be a more striking example of economic waste, *especially since it is believed that many of our institutions might be made nearly or quite self-supporting?*

The ideas herein expressed are not new to medical and legal experts who are familiar with criminal and insane court procedure and have observed the absurdities of our present antiquated system by which, for example, a defective adult, who mentally is perhaps twelve years old, is sent to the gallows in consequence of court procedure which makes no discrimination between him and the counterfeiter or accomplished bank burglar of superior intellectual endowment.

2. *Industrialization:* Occupation for the inmates of our public welfare institutions embraces not only prison labor, but also work as a physical, moral and mental necessity for every inmate, of every institution, who is able to work. Consider what would be, for example, the civilizing influence of green houses at the Geneva State Training School for Girls, where these girls could conduct a business, profitable to themselves and to the state, in cultivating flowers for the market.

Considerable progress already has been made in our institutions toward efficient industrialization, but what has been done is relatively only a beginning. The experience of other states and countries gives sound reasons for the conclusion that adequate, scientific industrialization of our penal, reformatory and charitable institutions would pay interest on any necessary additional equipment even to the extent of some millions of dollars and then leave a surplus, which, together with our present appropriations, would give funds sufficient to carry our welfare service up to a level that could set a standard for the nation. But the financial gain is not the most essential consideration. The hope of the criminal and insane lies in the greatest of all curative measures, in occupation. Much enforced idleness which prevails in many of our prisons, reformatories, asylums and other charity institutions is not only demoralizing and destructive to the inmates, but involves an economic waste which would destroy any legitimate industry. A properly industrialized prison, instead of making drafts on the state, has shown itself able to accumulate a circulating capital sufficient to finance the whole institution. A portion of such proceeds might be devoted to the support of the convict's family to restitution for thefts or damage to the property of those whom he may have injured. A convict who earns the means and makes such restitution thereby goes far toward proving his fitness for pardon or parole. Unfortunately under the present laws our institutions are not permitted to accumulate a circulating capital for their own use; surplus earnings must pass to the treasury of the state; all this should be changed.

3. *Farm Colonies:* Farm colonies, with suitable facilities for shop work, in the judgment of those who have made an intensive study of the subject and have had practical experience in the courts and in public welfare institutions, will be the logical corollary to scientific industrialization and suitable court pro-

cedure. These colonies will have to be educational and as such will differ among themselves according to the needs of the abnormal as widely as ordinary educational institutions differ according to the needs of the normal. One colony, let us say, would be adjusted to the needs of the harmless feeble-minded; another would serve psychopathic individuals who are prone to deeds of violence; another would be suitable for young law breakers, who, being mentally normal or nearly normal, need favorable environment for reform; another, such as we have already at Dixon, for epileptics. Such scientific classification would put an end to the herding together, to the disgrace of a civilized state and with untold injury to themselves, of heterogeneous masses of psychopathic delinquents with normal criminals. In such association the weaker-minded makes a hero, almost a god, of the stronger-minded criminal, whose willing pupil he becomes. Our penal institutions are intended to be reformatory; they are said often to be schools of crime.

Once established in working order, farm colonies would be accepted as a matter of course. Many families having psychopathic members would welcome the opportunity to place them where they could earn their own support, receive some education, and not be subject to the ridicule of their fellows, where they would be out of harm's way, harm to themselves and to others. I have been interested recently in a dementia praecox lad, twenty years old, of homicidal tendencies, who was placed by the court in such a colony in California, where he improved so much in a few weeks that he was sent home. The capacity of the place was limited and it was necessary to make room for others. Both the boy and his family were reluctant to have him taken out of "the school." Once understood, these colonies would be in demand like schools for normal people. Doubtless also private farm colonies like private asylums would arise to meet the demand of psychopathic subjects whose families shrink from public institutions.

It is true that all these changes are somewhat formidable, both in point of view and in point of practice; that they will necessitate considerable outlay for psychopathic laboratories and clinics, for the education of experts to conduct them, and for the education of police, attendants, wardens and judges, who, without special training, will not be competent. A judge in a criminal court, whatever else he may be, should be a criminologist. It is time to take active measures to reduce the reproduction and ravages of a dangerous group from an active, formidable, increasing liability to a relatively safe, decreasing liability.

The signs are that there is an oncoming wave in criminal court procedure which will roll over us unless we go with it, which will require every law-breaker to pass under the judgment both of the jurist and the pathologist. This will insure sympathetic treatment of the mentally abnormal delinquent, and what also is important, it will open the way to treatment and reform of the so-called normal criminal, a reform which the forces of retributive justice have failed to accomplish.

Whatever we do we must proceed with caution and conservation, but we can decide now whether we shall plan the most "comprehensive program" with an outlook upon the entire subject; so that whether we now do little or much, however long the task may be, our results shall square themselves with that program, so that in our progress toward completion no part of the work will have to be undone. In a survey of all public welfare laws many subjects of

importance will have to be considered. I specially have presented three which seem urgent: Court procedure, occupation and farm colonies.

It is believed that sufficient preliminary work has been done, that sufficient knowledge already is available to justify the attempt to bring the statutes of Illinois into harmony with our present knowledge of the relations of crime and disease. It may be possible to formulate or cause to be formulated legislative propositions which will arrest the attention of the General Assembly of 1919. The ground is scarcely broken. Will Illinois lead the way?—E. C. Dudley, M. D., President of the Illinois Board of Commissioners of Public Welfare, in the *Institution Quarterly*, Springfield, Ill., March, 1918.

Comparison of the Physical Condition of Prisoners on Admission and Discharge.—Following are the conclusions of Dr. Frank L. Heacox, physician at the State Prison, Auburn, N. Y. from an article under the above title in the *New York Medical Journal* for January 5, 1918:

1. The prisoners received from other penal institutions are in better condition at time of admission to this prison than those received from the courts and other outside sources.
2. The majority of prisoners are in better physical condition when discharged from this prison than they were when admitted.
3. This improvement is too small to meet the requirements of modern penal and medical standards.
4. The medical department is only a little more than barely able to take care of the illnesses and injuries that arise in the institution.
5. The medical staff, consisting only of two, is already overworked.
6. The improvement in the health of prisoners may be greatly increased by the following means: sanitary housing conditions; properly balanced diet; adequate medical staff.—R. H. G.

Psychological Elements in Law Making.—"It is most fashionable to decry the admission of emotion to any part in the making or administration of the law; to exalt the cold, clear light of reason as the sole permissible guide of the lawmaker and the judge. A former president of the American Bar Association in the course of a recent criticism of legislative tendencies said: The trouble with much of our legislation is that the legislator has mistaken emotion for wisdom. The idea is one which holds an honored place in the well-known Kultur and has received at least one extensive exposition (The Perils of Emotionalism, by Fritz Berolzheimer, published in the Modern Legal Philosophy Series). It needs, however, but small knowledge of psychology to discern that it is one alien to American ideals. No reform ever found its birth in the realm of intellect. The love of freedom, the love of justice, sympathy for suffering, what are these but emotions which for generations have pressed mankind onward to discover means by which they might be effectuated? Intellectual subtlety created the fellow servant doctrine and assumption of risk, and a national instinct of justice at last revolted from them. Emotion rose in arms at the horrors of slavery and beat down the cold intellectual portrayal of its economic advantages. Personal virtues are merely emotions made permanent. A selfish man feeling a momentary burst of generosity calls it an emotion. When that feeling becomes habitual he becomes a generous man. The teaching that pity is weakness bore fruit in the rape of Belgium. The lesson is not

without its value for us. The moment that we as a nation begin to act on the belief that we should be guided by purely intellectual considerations, putting aside as weak and visionary emotion and sentiment, we shall set our feet on the path that leads to some deed of enduring infamy."—From *Law Notes*, March, 1918.

Narcotic Addiction Serious Problem for the Government.—I do not hesitate to make the unequivocal and positive statement that the gigantic narcotic drug evil is a dangerous menace to human civilization, greater than alcoholism, and is sapping at the very lives and welfare of our American citizens, for this fact has been demonstrated clearly to me for many years as foreman of grand jurors, United States of America, southern district of New York, and likewise as foreman of the New York County grand jury.

In both of those capacities I have investigated an army of witnesses and defendants suffering from narcotic addiction, and as foreman of the federal grand jurors I drafted resolutions which were adopted and filed in the United States District Court by order of the justice presiding at that term.

These resolutions call upon the United States attorney for the southern district of New York to take up with the Department of Justice the subject so as to cause a bill to be prepared for submission to Congress seeking the enactment of broad and suitable statutes that will eliminate this evil in so far as this can be done by statutory enactment, regulating and controlling the supply of narcotics from its source and in its distribution.

The resolutions recite that the entire output of the production and manufacture of opiates by all manufacturing and pharmaceutical chemists and all other manufacturers of products of opium or coca leaves, their salts, their derivatives or preparations, etc., shall be in absolute and direct control of the United States Government, and that chemists and internal revenue officers shall be assigned to all these plants throughout the United States, its territories and possessions; that the output of the manufactured product should be shipped to various government warehouses, zones being established therefor throughout the United States; that the government officially shall control the price and the quantities of narcotic drugs shipped to the various wholesale druggists, jobbers, dealers, retailers and pharmacists; that all these and all manufacturing plants shall be bonded and licensed, and that the government shall supervise and control exclusively all import and export shipments.

It has been shocking to hear these unfortunate and suffering addicts testify as to the ease with which they purchased opium, morphia, heroin and cocaine from persons dealing, peddling or otherwise trafficking in these drugs upon the streets or in places known to them and their customers and slaves. This is a condition which obtains at the present time. This traffic is carried on by some of our worst criminals and has associated with it abominable activity in the recruiting of the youth of our city as future customers.

It was also shocking to hear how certain physicians unscrupulously and illegally engage in the supply and sale of these narcotic drugs, and how they promiscuously write prescriptions for these narcotic addicts under guise of correctional medical treatment and promised medical cure, which prescriptions the addicts take to certain druggists for compounding at fabulous prices.

I have found that between the criminal traffic and street peddling and the physicians of the type I have described an addict with the necessary funds can

purchase all the narcotic drugs he wants, and it is exceedingly easy for those who know how to go about getting them. I have officially investigated the matter and found that the illegitimate supply is greater than ever known in the history of the underworld.

It was pathetic to listen to some witnesses, both men and women, who, in good faith and in hope of a radical cure, had gone to certain physicians and were given spurious and worthless cures and treatments. These physicians were really exploiting the helpless narcotic addicts, commercializing their terrible misery without giving them any relief.

I caused the indictment of several of these physicians and dishonest druggists and they are serving their sentences.

My personal experience for many years as foreman of the United States grand jury, and also previously as an associate member of that body, has convinced me that the United States Public Health Service at Washington must be a factor in any law that is to be enacted for safeguarding the future lives of the addicts. I suggested to the Department of Justice that the United States Public Health Service should take steps to initiate an exhaustive study and investigation of the prevailing universal condition of narcotic drug addiction, and the present methods and manners of treating this calamity, and provide intelligent and humane care for the handling of the victims and encourage lay and medical education concerning narcotic drug addiction.

Most important would be an official and exhaustive medical investigation by the combined powers of the Public Health and Internal Revenue Services of all so-called "treatments" and "cures," their intrinsic therapeutic value to be absolutely established and determined upon their scientific merits and not upon what those associated with them advertise.

As foreman I discussed officially with several of the United States District Court justices the control of these violations of narcotic drug laws. I said we must proceed simultaneously on two lines: First, to control illegal and criminal distribution, whether the illegitimate distribution is through the underworld street peddler or through the medium of dishonest members of the medical and pharmaceutical professions; second, for the sake of compassion and the practical handling of the problem of disease and sickness in the addict, to obtain humane and skillful medical care and treatment by honest physicians, reliable institutions or other reputable means.

I have made a study of narcotic drug addiction for many years past by visiting and consulting with the greatest medical authorities and visiting their clinics in Jena, Heidelberg, Freiburg, Munich, Vienna, Berlin, Paris, London and in this country. I also have consulted the greatest pharmaceutical and chemical authorities and manufacturers in Germany and England.

I am therefore in a position to interpret evidence adduced before me as foreman of the United States grand jury and to express my convictions on the strength of my own research work, reinforced with the practical research of others. My own life work and training and practical experience has been that of chemical engineering and experimentation, especially in the lines of organic chemical combustion products.

It has been established beyond a doubt that narcotic addiction is a disease, but many physicians do not understand the proper treatment of such patients. That is a well known fact. The quicker they realize it and exercise their brains

in the final determination of what is the exact pathology of this disease and what are the salient principles upon which clinical treatment can be practically and in genuine faith worked out, the quicker will the narcotic problem be under control.

They should master the pathology, clinical symptoms and therapeutics of addiction and have a finer understanding and conception of physiological and pharmaceutical chemistry, and when prescribing opium or morphine, or any of its alkaloids, derivatives or preparations, be able to appreciate how they act on the human system and what they are capable of doing.

We have now reached a certain stage in this gigantic problem and are halted by lack of medical information. Physicians must try to identify and isolate whatever material in the body causes the frightful suffering of the disease. English, Continental and American research authorities whom I consulted characterized it as a "phenomenon" in the human system. Alkaloidal and physiological chemistry, combined with careful and serious clinical study, will be the dominant factor that will ultimately determine the character of this phenomenon and its results.

It is very apparent that there seems to be a lack of sufficient number of medical authorities who have been trained so that they are competent to investigate this problem.

At the request of Senator George H. Whitney, chairman of the Joint Legislative Committee of New York State now investigating the matter of narcotic drug addition, I called attention to the very serious situation our boys in the American army would be forced to meet in the necessary administration of opiates at the front. It has been determined that a considerable proportion of those already wounded on the battle fields have had this condition unavoidably developed in them. We shall not be fulfilling our national duty to them if our activity and that of our scientific professions is not directed toward saving them now from narcotic slaughter, which is slow, agonizing torture and never ending misery of mind and body, compared with which a heroic death from the fire of shrapnel on the battlefields is infinitely more merciful, and we must find out the best way to help and save them.

We are awakening to the fact that ignorance has been the real cause of our narcotic drug problem. All the evidence or real value now coming out in the Whitney joint legislative committee investigations from people who are in a position to speak with real disinterested authority is showing to the world that we have handled the narcotic addicts like people of low tastes, weak wills, criminal and other tendencies, and that we have thought them to be such, while in reality these addicts have been persons sick and suffering great bodily torment, and that what they need most is medical and scientific consideration. We cannot any longer delude ourselves as to what drug addiction really is; camouflage of obsolete ideas is as foolish and dangerous in medical treatment as it is now shown to be in the general methods of procedure we have in the past adopted toward the narcotic addict.

New York City.

ALBERT J. WEBER.

COURTS—LAWS

Report of Committee on Vagrancy to the Ohio Branch Council of National Defence.—In conformity with your request of June 22, 1917, we herewith submit our report and recommendation for a plan whereby the service

of persons convicted of vagrancy can be utilized in productive work, as well as some suggestions upon related matters.

In developing a workable program for the treatment of persons convicted of vagrancy, we are confronted with legal restrictions which render the problem rather difficult—so much so that we cannot make the recommendations as extensive and intensive as might be done under other circumstances. If the State of Ohio were under martial law, we would be unhampered; but we are in a status of peace and under civil law so far as our own affairs are concerned.

The only safe legal assumption that we can take is that a person cannot be classed as a vagrant until some court has so declared. There doubtless exists in our state large numbers of persons who are loiterers without any known means of support who would find it difficult to convince a court that they should not be classified and punished as vagrants.

A vagrant under our General Code is given a general definition in Section 13409 as "A male person able to perform manual labor who has not made reasonable effort to procure employment or has refused labor at reasonable prices." The section further provides a maximum penalty of fifty dollars.

Section 3664, a part of the municipal code, among other things permits municipalities to pass an ordinance for the punishment of vagrants and common street beggars. The definition of vagrant is doubtless left for statement in the terms of the ordinance. The following section (3665) permits the fixing of a more severe punishment than is found in the general law referred to above (Section 13409).

There is a permissible scale of imprisonment:

First offense, not more than thirty days;

Second offense, not more than ninety days;

Third offense, not more than six months;

Fourth or greater offense, not more than one year.

To the above may be added a fine of not more than fifty dollars.

There is an interesting plan of cumulative sentence set forth in Section 13741, which is not used to any great extent. This section provides that any person who is convicted and sentenced for the fourth or greater time for violation of state laws or of municipal ordinances shall be considered an "habitual offender" and, if such statement is properly set forth at his trial, he may be sentenced to a workhouse for a term of one to three years. Subsequent sections provide for parole of such prisoners and for proper supervision while upon parole. Section 4131 relates to the same matter but restricts the offenses to those committed within Ohio.

In connection with the treatment of the so-called vagrant there is an attempt made in Section 13408 to define tramp, who upon conviction may be sentenced to the penitentiary for from one to three years. This section has so many limitations that it cannot be made to apply to the person commonly known as a tramp unless he acts in some of the definite ways set forth therein.

Assuming that by use of general state law, or by means of a suitable municipal ordinance, vagrants have been arrested and convicted, we confront the main question submitted to this committee: "How can they be utilized in productive work?" Many of our communities have no workhouses and no contract has been made with existing workhouses which have a limited capacity, and some of them are not engaged in very productive work. The alternative

in such cases is commitment to a municipal or a county jail, where there is usually no productive labor of any kind provided. Convictions under such circumstances are an added expense and nothing of benefit is accomplished. This situation causes the practice in many communities of remitting the fines or suspending the sentence on condition that the offender immediately "moves on."

The workhouses are confronted with the limitations of Section 41 of Article II of the constitution of Ohio which restricts the labor activities of such institutions. The local market for manufactured articles is so small and the outside objections offered so many that very little work is done within the walls that may be considered productive.

There is a strong tendency to change to farm colonies, but this requires the consent of the voters to secure the necessary funds which have been denied in several instances. It is obvious that all prisoners on a farm colony cannot be used in purely agricultural activities. Unless quarries and paving brick plants are possible on such farms, no very profitable result will follow.

By a combination of farming, crushing stone and making brick the correction farm colony owned by the District of Columbia at Occoquan, Virginia, has offered an abundance of profitable labor for hundreds of offenders in all seasons of the year. A similar development of the state farm for misdemeanants near Greencastle, Indiana, has shown the feasibility of centralized state control in places where diversified employment can be provided.

Centralized state control in Ohio would require additional legislation, but this committee is of the opinion that such control is necessary before the vagrant and tramp, as well as other misdemeanants, can be successfully handled in productive labor.

Under existing laws, nevertheless, the case is not hopeless. Sections 7500 to 7514, as found on page 656 of Vol. 106, Ohio Laws, provided a definite plan for the use of prisoners in jails and other penal institutions in the preparation of road building materials and in the performance of labor in the building and repair of streets and roads. The State Highway Commissioner, county commissioners and city officials are given very definite authority in these sections. Furthermore, cities having workhouses are empowered by Section 2227-4 to use prisoners for public work outside of such institutions. Selected prisoners are now being assigned in some cities to do work in parks, on streets and upon other public lands and within public buildings. In other instances groups under light guard have been engaged in street grading, etc.

While this report may seem to emphasize imprisonment as a means of disciplining the work shirker, yet we must emphasize the increased application of the parole law; provided there is a willingness to expend some money for paid supervisors of paroled men. Attention might be given to the development of a staff of volunteer parole officers, as is done very effectively in some localities.

Furthermore there is abundant opportunity to develop and apply the principles of the suspended sentence, or probation, as set forth in Section 13706 to 13715, especially in the case of resident vagrants or loafers.

The probation law has been given an interesting application in Youngstown, Ohio, where there has been a marked shortage of common labor. Through the Chamber of Commerce arrangements were made with the railway companies to use convicted persons in freight houses to truck freight. The Police Judge approved the plan and has been providing groups of men

under suspended sentences for these freight stations. He made it a condition of the suspended sentence that they receive wages, and that they room and board at buildings provided by a social service agency, where they could be kept under supervision and observation. The wages of the men paid all expenses. The results of such an arrangement have been:

1. It provided needed employees.
2. It removed from streets and public places a number of known loafers or vagrants.
3. It saved expense of commitment to a workhouse in another city.
4. Wages more than sufficient to pay expenses for care of men; surplus given to dependent families.
5. Bums are not inclined to "hobo" to Youngstown.
6. Normal employment under almost normal conditions.
8. Some men received a new impulse to work after full release from conditions of probation.

Doubtless other forms of group employment could be developed in other cities where the court, the business interests and the social agencies will get together on an agreed plan.

In this connection it seems proper to call attention to practices in some communities which have a tendency to encourage vagrancy, especially of the itinerant type.

1. In many cities it is a common practice to afford lodging in city jails and station houses to all applicants, often with the kindly injunction the next morning to "move on."

2. Lodging houses under private management are often not sufficiently exacting in their methods. As long as the applicant has the price of a bed no other test for admission is applied. The applicant may beg the money on the street, get his lodging at a nominal cost, and thus vagrancy is encouraged. Wherever possible the conditions of service should include some form of light labor, as well as an insistent subjection to personal cleanliness. This discourages the inveterate vagrant. Municipalities should by ordinance provide for strict regulation and inspection by health departments of all establishments known as lodging houses.

3. Riding on a freight train is a favorite means of transportation for the transient vagrant. This practice causes a great annoyance to railroad officials, and it is claimed that much loss to railroad property is a result of this practice. Police authorities should aid railroad policemen to abate the practice, but again the city does not care to incur the expense of convicting a non-resident and he is cheerfully allowed to "move on."

It is very obvious that many phases of vagrancy can be handled successfully only as a state problem, and the convicted offenders cared for in state controlled institutions, but this is not possible under existing laws. We even venture the opinion that all petty offenders should be under state control in state institutions with definite forms of productive labor, as from this larger army of petty offenders come many of the smaller group of felons who only at the height of their criminal careers are given over to the custody and care of the state with a belated hope that they may be reformed.

The Ohio Branch Council of National Defense has been calling upon various state departments for assistance and service in securing special information.

It has been suggested to this committee that we needed more definite data concerning the degree and extent of vagrancy and that such information should be secured at an early date through some special census. We believe that the best and most immediate results can be secured by commanding officials and boards in touch with local institutions and officials to secure by special investigations and reports such obtainable data as may be desired from time to time.

Recommendations

We, therefore, offer the following suggestions for immediate action:

1. That municipal officials be urged to enforce rigidly the provisions of Section 13409 in case there is no special ordinance as authorized by Section 3664, and that township officials enforce the former section.

2. That municipalities which do not have an ordinance embracing the maximum provisions of Section 3665 be requested to pass such an ordinance at an early date.

3. That the attention of police judges and prosecutors be called to the habitual offender act (Section 13741), as many chronic vagrants will be found in this class.

4. That, while vigorous prosecution for vagrancy is encouraged, the municipal courts be urged to use the probation principles of the suspended sentence law and that city councils be requested to provide adequate funds for needed probation officers as required by Section 13712, so that commercial and civic organizations will be encouraged to organize plans for the group employment of convicted vagrants and loiterers under strict supervision.

5. That authorities in charge of workhouses develop a plan for intensive and intelligent use of parole system.

6. That mayors be urged to have entire police department co-operate with the state employment agency of their respective districts, to ascertain whether a suspected vagrant was really willing to work when opportunity to do so is offered.

7. That police departments submit monthly reports to the Ohio Branch Council of National Defense as to the number of arrests for vagrancy and their disposition.

8. That the larger cities designate one or more plain clothes men as mendicancy officers, whose names should be listed with Council of Defense so as to afford a convenient exchange for special cases.

9. That vagrants of a chronic type who probably would not respond to local care and who are guilty of some of the specific offenses designated in Section 13408, be indicted and prosecuted as tramps; attention of city and county authorities should be called to this section.

10. That no convicted vagrant be allowed or ordered to "move on" except when it is reasonably certain that such action is warranted by the fact that he will have definite employment at a certain destination. Such cases should always be referred to the proper district employment bureau. Vagrancy must be vigorously prosecuted wherever found by local government unit, if the state as a whole will to any degree meet the problem.

11. That the Ohio Branch Council of National Defense from time to time utilize the service of the Ohio Board of State Charities, which by law has authority to investigate all public correctional and benevolent institutions and to demand reports from certain officials to secure information concerning the

extent of the parole and probation systems, the extent of the application of work tests for the recipients of public relief as set forth in Section 3493, the extent of the use of county and city prisoners on street, road or other public work, and the extent that public officials may by carrying on other permitted activities by convicted persons; also to study the means whereby greater activities in these lines may be obtained; and also to encourage and urge their fullest possible use.

Proposed Legislation

For legislative action we recommend the following:

1. Strengthening of Section 13408 and 13409 relating to tramps and vagrants.

2. Passage of law relating to idleness and vagrancy during war, similar to act passed in West Virginia, May 19, 1917. (See this number, p. 0000.)

3. The Governor is requested to appoint a special advisory commission, similar to the Prison Commission appointed in 1913, or to designate some existing Board, Commission or Agency, to study the entire workhouse and misdemeanor problem and to prepare a plan for legislative action.

Appended to this report will be found the text of a number of the sections of the General Code referred to in this report. There is also appended a suggested ordinance, prepared by the Attorney General, for adoption by municipal councils, in accordance with Section 3664 and 3665. (Text of law not printed.) (See this number, p. 000.)

Respectfully submitted, H. H. Shirer, Chairman; W. A. Greenlund, James L. Fieser, J. M. Hanson, D. Frank Garland. (From Ohio Bulletin of Charities and Correction, Dec., 1917.)

Suggested Ordinance Relative to Begging, Etc.—

Be it Ordained by the Council of the City of....., State of Ohio:

SECTION 1. That any person who, within the corporate limits of the city of....., State of Ohio, wanders about from place to place or begs in the streets or public places or lives without labor or visible means of support, or acts in a suspicious manner and is unable to give a reasonable account of himself, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed \$50.00 and costs of prosecution.

SEC. 2. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed....., 1917

..... Clerk President

West Virginia Law Relative to Idleness and Vagrancy.—

An Act to prevent idleness and vagrancy in West Virginia during the continuance of the war in which the United States is now engaged.

Be it Enacted by the Legislature of West Virginia:

SECTION 1. It is hereby declared to be the duty of every able-bodied male resident of this state, between the ages of sixteen and sixty years, to habitually and regularly engage in some lawful, useful and recognized business, profession, occupation or employment whereby he may produce or earn sufficient to support himself and those legally dependent upon him.

SEC. 2. From the time this act becomes effective, and thenceforward until six months after the termination of the present war between the United States

and the Imperial German government, any able-bodied male resident of this state between the ages of sixteen and sixty, except bona fide students during school term, who shall fail or refuse to regularly and steadily engage for at least thirty-six hours per week in some lawful and recognized business, profession, occupation or employment, whereby he may contribute to the support of himself and those legally dependent upon him, shall be held to be a vagrant within the meaning and effect of this act, and shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one hundred dollars for each offense, and as a part of such sentence and punishment such offender shall be by the trial court ordered to work not exceeding sixty days upon the public roads or streets, or upon some other public work being done by and in the county in which such person shall be convicted, or by any municipality therein. One-half of the fair value of any such labor so performed under such sentence, shall be paid by the county or municipality receiving the same toward the support of any persons legally dependent upon such vagrant, but if there shall be no such legal dependents, then payment shall be made on account of any labor performed under such judgment. Any labor so required by a judgment of conviction hereunder shall be rendered in all respects as is now provided by law in case of other prisoners in jail.

Prosecutions for vagrancy hereunder shall be instituted and conducted as other criminal prosecutions, and in no case shall the possession by the accused of money property or income sufficient to support himself and those legally dependent upon him to be a defense to any prosecution under this act. In no case shall the claim by the accused of inability to obtain work or employment be a defense to a prosecution hereunder, unless it shall be proved that the accused promptly notified the proper representative of the State Council of Defense of his inability to obtain employment and requested that work or employment be found for him, and that such employment was not furnished.

SEC. 3. All justices of the peace, mayors and police judges within the state are hereby given jurisdiction to try and punish all offenders under this act, or such prosecution as may be by indictment. Each week or portion thereof that such resident shall continue as a vagrant hereunder shall constitute a separate offense, and no appeal shall be allowed from any judgment of conviction for vagrancy, unless the accused shall give bond, with penalty and security to be fixed and approved by the court granting the appeal, conditioned not to violate this act during the pendency of such appeal. Any judgment for the performance of labor hereunder may be suspended by the court pronouncing the same, upon the execution by the person convicted of a bond, with the penalty and security approved by the court, conditioned to comply with the provisions of this act for one year from the date of such bond.

A violation of the condition of such last mentioned bond shall entitle the state to recover the amount of the penalty thereof, and in addition thereto the convicted person shall be re-arrested and required to serve the sentence formerly pronounced against him.

SEC. 4. For the purpose of this act any male person found in this state shall be deemed a resident, and in any prosecution hereunder, proof that the accused habitually loiters in idleness in streets, roads, depots, pool rooms, hotels, stores or other public place, or that he is habitually intoxicated, or is addicted to the use of narcotic drugs, or is a professional gambler, or, being

able bodied is supported in whole or in part by the labor of any woman or child, shall be prima facie evidence of vagrancy.

Sec. 5. All acts and parts of acts in conflict with this act, or any part hereof, are hereby repealed.—Passed May 19, 1917; effective June 19, 1917. (From Ohio Bulletin of Charities and Correction, Dec., 1917.)

Mother's Pensions in America.—In the midst of the greatest crises in American history, on the day in June last, when ten million citizens of the United States were registering for compulsory military service in the war, the attention of the entire nation was diverted to the search for a kidnapped baby.

The baby son of a Springfield, Missouri, banker had been carried off into the Ozark mountains and was being held for ransom. A thousand mountaineers were assembling to go out on the trail.

And yet little Lloyd Keet, the kidnapped baby, drew as much attention as the registration itself. In the news columns of the press his story shared equally with the accounts of the registration. Editorial writers devoted part of their columns to his case. It was a national sensation.

All of which merely shows how fundamentally and passionately all men believe in the sanctity of the child's right to its mother. A basic human instinct is outraged by the crime of the kidnapper. The law recognizes this and punishes that crime with the most drastic severity.

And yet the law itself has been for years guilty of kidnapping children. For no crime at all but because of the misfortune of poverty, mothers have been legally bereft of their little ones. Children have been kidnapped by the State, shut up, often practically incommunicado, in huge prison-like institutions. Not because their parents failed in love or duty. It was simply because they were poor.

But thirty American states have now redeemed themselves from this crime of violating a fundamental human instinct. They have established a Mothers' Pension system. Instead of paying an institution to care for the children of poverty-stricken parents, they now pay the mother herself to care for the children.

The phenomenal rapidity with which the Mother's Pension system spread over the country, once it had been outlined, is explained by the fact that it appeals to one of the deepest of human emotions, to the same instinct in men that made the case of the kidnapped Lloyd Keet rival in the news an event of world-wide importance.

In 1911 the first Mothers' Pension law was born. Previous to that time our American states had been saving children from poverty at home by sending them to charitable institutions.

The mothers' pension system is not merely a relief measure. It is a utilitarian system for the benefit not only of the individual directly concerned, but of society, just exactly as the public school is. In New York the law provides that the mother who receives a pension shall be told at the time that it is not a charity but a legal pension.

The result is that the degrading influence of receiving charity does not enter into the case. And the dignity and nobility of motherhood is preserved. The woman with her family about her remains a useful, honored member of society.

And the child likewise is directly benefited. The happiness of home life, its freedom for individual development is his. In the institution where, but for the mothers' pension system he would have been sent, growth, individuality and happiness are all stunted. It would seem unnecessary to argue this point were it not for the fact that society has in the past been so ruthless in breaking up the homes of the poor. Society treats almost as an axiom, when it discusses social systems, the sanctity of family life. The home is considered a foundation stone of our whole civilization. And yet in action, society has been continually guilty of violating the home, wherever poverty entered into the problem.

And this old system of relieving poverty-stricken homes by breaking them up was not even economical. New York City last year paid three and a half million dollars and individuals contributed an equal amount, to institutions for the care of 22,000 children. In the mothers' pension states last year ten million dollars was paid to mothers for the care of 100,000 children. It cost the State, in other words, 300 dollars a year to support a child in an institution and only 100 dollars a year to help the mother support her child at home.

More than 1,000 children in New York City will this year be taken out of institutions and restored to their mothers. Trial of the system in thirty States has proved it to be economical, humane and easily administered. In the larger cities it cost 5 per cent for the administration of the system, while it cost 76 per cent to administer charity.

Child poverty, producing defectives, delinquents, criminals and incompetents of all kinds, is one of the most wasteful evils in the community. Last year 800,000,000 dollars were collected from ratepayers to support institutions for dependents and criminals. The public schools themselves did not receive so much of the ratepayers' funds. By attacking child poverty with a rational system of mothers' pensions we go right to the source of one of the causes of the defective and criminal element in the community. Figures prepared by juvenile court officials in Chicago show nearly a hundred per cent efficiency for Mothers' Pensions as a preventive of juvenile dependency and delinquency.

A good mother is the best guardian of her children. Experience is that she very rarely abuses her trust, under the pension system; less than once in a hundred cases, statistics of the scheme show. The widow with children under 14 who needs a pension goes before the juvenile court, and, proving her need, claims her State pay for State service. She is now as much a servant of the State as a judge or a general. She must devote herself to her State work and do no other. Once a month she reports to the juvenile court. Inspectors, male and female, visit her, to see how she is getting on. If she is abusing her trust, she loses both her pension and her children.

Money paid for mothers' pensions returns to the public in the reduced cost of hospitals, police courts, jails and asylums. The system is a parallel to the public school system, and more than that, is necessary to it. It is folly to spend vast sums for public schools and try to educate in them children who are not properly fed, clothed and cared for at home. Child poverty is one of the greatest tragedies of the day, and the mothers' pension system destroys it.

Within ten years there will be no child poverty. No State will permit its children to go hungry or poorly clothed, and no State will tear children from their own mothers and turn them over to soulless institutions. No reform in history has swept over the land as fast as the mothers' pension system. In

the space of the last six years three-fifths of the United States embraced the scheme. It took the public school system ages to develop—by comparison.

Since I have been in England scores of audiences have thrilled and risen to their feet and applauded when I told my experiences in the workings of mothers' pensions. And I knew that though I stood there before them I was practically forgotten. Their tribute was not to any lecturer, but to motherhood. I had touched the deepest chord in their beings.

You have but to point out to people the facts—of which most of them are ignorant—the facts of how the State in the past has been breaking up families for the crime of poverty, and then the possibility of preserving the family by a just, sane, efficient and economical system of mothers' pensions, and you get instant and overwhelming appreciation.

Mothers' pensions are coming throughout the world, not because any one or two men go about preaching the merits of it, but because, once the idea is liberated, it grows and spreads of itself and soon has won over the whole community by the simple sanity and humanity of its fundamental principles.—Judge Henry Neal in *Juvenile Court Record*, Chicago, October, 1917.

Selection of Judges by the Bar.—"The question of the extent to which the nomination of candidates for judicial office should be controlled by the bar continues to be much agitated. In contrast to the views of Mr. Shelton heretofore commented on (*Law Notes*, July, 1917, p. 63), attention may be called to a recent open letter of Mr. Justice Hamer of the Nebraska Supreme Court, who said in part:

"Everyone knows that while the judges of the Supreme Court are honest and intend to do right, and that as a whole the result reached is generally the proper result, yet every lawyer of wide experience knows that on nearly every supreme bench there is, or may be, or has been, some judge with peculiar predilections, or unexplainable prejudices. Maybe he is nearly always in favor of breaking the will that is contested, maybe he is nearly always for the city or town that is sued, maybe he is nearly always against the railroad company in a personal injury case, and also against the packing house and against the contractor and builder and the manufacturing plant in all such cases, maybe he is nearly always in favor of the defendant in a criminal case, maybe he is nearly always for the insurance company when it is sued, or for the church or the lodge that is sued, and maybe he is for the big bank as against the little one, and maybe he is for any bank as against its customer.

"These are only illustrations. Whatever the peculiarity of this particular judge may be, the men who obtain his nomination and election have probably secured a bonanza in their business, if his peculiar leaning is in their direction. Therefore, when the lawyers recommend anyone, it is a pertinent question as to what particular line of the law business they are in. They are likely to know the predilections of many judges or their prejudices or tendencies, and they may succeed in making money out of the peculiar habit of thought of the judges instead of out of the merits of the cases tried. Even one judge on the court having strong prejudices in any direction is dangerous to the safe and orderly administration of justice. Most lawyers of money-making tendencies are likely to lean strongly in favor of the judge whose peculiar views enables them to make money.'

"To this it may be answered that for every lawyer who favors a candidate because of his known predilections there will be another who opposes him for

the same reason. The adherence of a representative majority of the bar can never be obtained on any such narrow grounds. Over and above the entire argument pro and con stands out the salient fact that if the selection of the heads of any other purely technical service, college professors for instance, was made in a manner comparable to the popular choice of judicial candidates ruinous consequences would speedily be apparent."—From *Law Notes*, March, 1918.

Causes of Increasing Juvenile Delinquency.—Mr. Cecil Leeson, an English expert on social welfare work, is reported as having said recently, referring to conditions in Great Britain:

"The reasons for the general increase are that there has been an abnormal demand for boy labor; abnormally high wages have been paid small boys suddenly released from school discipline to go to work; the police force has been diminished; street lighting has been restricted; enforcement of the school attendance laws has been relaxed; thousands of children have been turned out of school by the use of school buildings for military purposes; and home discipline has been slackened, while at the same time club, settlement and church work, evening classes, and all general welfare work have been interrupted, with the natural result that children have been running wild."

Following this diagnosis of the cause of augmented delinquency Mr. Leeson said:

"These are some of the things we must avoid here in the United States. England has found her promiscuous breaking down of labor laws at the start of war did not pay. Her child workers are reported as 'drawing on their strength,' and the government reports that 'munition workers in general have been allowed to reach a state of reduced efficiency and lowered health, which might have been avoided without reduction of output by attention to the details of daily and weekly rest.' We must profit by the experience of other belligerent countries. We must not allow our school system or our child-protective laws to be broken down. We must continue to the very last moment our clubs, settlements and other welfare organizations so that the little children of America, our future citizens, whose lives we should conserve now more than ever, may be the last to feel the stress of war."

The matter is one worthy of close consideration by the legal profession, whose members are leaders not only in the legislative halls but in the affairs of the average community.

Report of the Agent for Aiding Discharged Prisoners in Massachusetts.—

To the Director of Prisons:

The number of released male prisoners aided from Dec. 1, 1916, to Nov. 30, 1917, was 2,054.

Two hundred twenty-three men who had been inmates of the State Prison were assisted as follows:

Railroad fares to homes or places of employment.....	\$ 184.63
Board and lodgings.....	1,804.50
Clothing	457.67
Tools	103.80
Miscellaneous	7.50
Total	\$2,558.10

Eight hundred and ninety-six men from the Massachusetts Reformatory and 400 from the Prison Camp and Hospital were aided as follows:

Railroad fares to homes or places of employment.....	\$1,930.31
Board and lodgings.....	2,807.83
Clothing	704.48
Tools	58.60
Miscellaneous	9.62
Total	\$5,510.84

The amount expended in aiding the men from the Prison Camp and Hospital was \$1,365.29.

During the same period 535 released prisoners from the jails and houses of correction were assisted from the funds of the Massachusetts Society for Aiding Discharged Prisoners, at an expense of \$1,843.92.

To keep expenditures within the limits of the appropriation has been difficult. The extension of prison-camp work has led to the transfer of more men than usual from the jails and houses of correction into the custody of the State. These men are employed at useful work out of doors, where they do as well as laborers that are paid daily wages.

Upon their release they naturally expect help. If they go immediately to a place of employment, they must pay a week's board in advance, and in some cases need clothing or tools. With our limited appropriation it has been impossible to do much for them. This is a disappointment to the men and is embarrassing to the agent, whom they look upon as the State's representative in their cases.

For two or three years past the Legislature has reduced the appropriation for aiding discharged prisoners, notwithstanding that Revised Laws, chapter 225, sections 136 and 137, allow the expenditure of \$11,000 to aid prisoners released from the State Prison and Massachusetts Reformatory, and to help discharged female prisoners.

Since the passage of this general law the State has built the Prison Camp and Hospital at West Rutland, from which 400 prisoners were released during the year. To the hospital section of this institution, all consumptive prisoners in the Commonwealth must be sent for treatment; many well men are removed to the camp section for work upon the land and highways.

Up to the present time no addition to the appropriation has been made for this institution, but rather a reduction of \$1,000 was made from the general appropriation last year. It is needless, perhaps, to mention that board, clothing and all other purchasable commodities are higher now than in the memory of man.

The policy of helping prisoners upon their release has, since 1845, been the established custom of Massachusetts. To put these men in the way of self-support is the truest economy for the State, and this should not be jeopardized for the little that it may cost to do so. To carry on the work properly I would urge that an appropriation of \$12,000 for aiding prisoners be granted for the coming year.

This matter is not urged for the purpose of increasing expenditures, but that sufficient funds may be available to meet necessities. In the event that the amount asked for be not needed, it will remain in the treasury.—George E. Cornwall, Agent, Dec. 1, 1917.

Room 24, State House, Boston, Dec. 1, 1917.

Success of Parole in Cook County, Illinois.—Applicants to the Central Howard Association of Chicago during January and February, 1918, were limited to eighty-four in number, due apparently to abundance of work, and the ability of the released prisoners to secure their own work. Nevertheless, financial assistance was required in one hundred and seventy-one instances in all, and five hundred and forty-one interviews with applicants were made.

Sensational statements of the press as to prevalence of crime due to the parole law have been answered by facts. Our records for the past year show that seventy-six per cent of our paroled men have made good, and but few have actually returned to crime. Notwithstanding the January Grand Jury recommended the repeal of the parole law, the facts are that out of one thousand and thirty-four men indicted, in December and January, only nine were under parole.—F. Emory Lyon, Sup't. Central Howard, Chicago.

PENOLOGY

Provision for Discriminatory Treatment of Women, Boys and Men in Penal and Reformatory Institutions in Kansas.—The "Digest of Laws establishing Reformatories for Women" by Helen Worthington Rogers in this Journal for Nov., 1917, mentions Kansas as one of the states that has created state reformatories subsequent to January, 1917 up to which time the digest was prepared. This law is found in Chapter 298, Kansas laws, 1917. It took effect April 5, 1917. It is a very far-reaching act, and revolutionizes the treatment of delinquent women utterly in Kansas. This act establishes "The State Industrial Farm for Women" and places it under the State Board of Administration which handles, in a degree through a "state manager," all penal, reformatory, educational, benevolent and corrective institutions in the state. The state is empowered to buy no less than 160 acres for this farm. The Board may construct buildings, but no dormitory, sleeping apartment or living room may house more than twenty-five inmates, exclusive of officials. The superintendent of the farm must be a woman. Section five has the remarkable provision that "every female person, above the age of 18 years, who shall be convicted of any offense against the criminal laws of this state, punishable by imprisonment, shall be sentenced to the State Industrial Farm for Women, but the court in imposing such sentence shall not fix the limit or duration of such sentence. The term of imprisonment of any person so convicted and sentenced shall be terminated by the State Board of Administration, as authorized by this act, but such imprisonment shall not exceed the maximum term provided by law for which the person was convicted." A further limitation is that if the woman is under 25 years of age and a first offender, the Board may parole her; otherwise she shall stay at least the minimum time fixed by law, and in case of murder, she shall stay the full time unless the governor intervenes. If the woman be pregnant or nursing a child, such child may remain with its mother two years and the Board may permit it to remain longer. The sweeping effect of this law is to end the old travesty of sending women to the several jails of the state. Each county has, at least in theory, a jail and there are 105 counties. As the Board of Administration has not so far been able to select a farm, the state uses a farm at the state penitentiary, but without its walls, where indeed the women prisoners of the penitentiary, only 13 in all, have been kept in a farm cottage for several years, with not a hint to the casual

visitor or passerby that the place is other than a well kept farm with a number of women employees.

The law contemplates that in some way there shall be a classification of inmates. The provision for building prescribes that they shall be so constructed as to admit of a classification of persons committed thereto. A record is required to be kept of many facts as to each woman, including "such other facts pertaining to her early social influences, habits and former life and character as will aid in determining her natural tendencies and the best plan of treatment." "Every person sentenced shall be credited for good personal demeanor and diligence in labor and study and for results accomplished, and to be charged for dereliction, negligence and offenses." Each inmate's standing shall be made known to her as often as once a month. Each may converse with members of the Board once a month if she wishes. Provision is made for the employment of the women in the manufacture of goods and utensils, and in light forms of agriculture such as truck-gardening, chicken-raising, and dairying, but not to the exclusion of raising cereals and grasses.

Paroles are encouraged, and absolute releases may be granted by the Board when it seems that the inmate will be of good behavior. Each inmate shall be granted under uniform rules, not over three cents a day while in the second grade, nor over five cents in the third grade, so as to enable her to pay her expenses when discharged until she is able to secure employment, and first wages, and this may be paid her in bulk or in installments. In assigning inmates to occupations, cottages and dormitories, the superintendent shall make a careful classification according to physical, mental and moral conditions, "in order that the groups of individuals may be mutually helpful in reformation." Appropriation was made of \$50,000 for buildings and \$5,000 for the salaries the first year.

In 1885, the state of Kansas entered upon a policy of discrimination between youthful and older men convicted of crime. In that year an Industrial Reformatory was established for male persons between 16 and 25 years, convicted of crime for the first time. In 1889, an Industrial School for Girls was established for girls who were convicted or were incorrigible or delinquent and under the age of 16 years. But after that nothing was done by the legislature to discriminate among delinquents over the age of 16 years if female, until this act of 1917. The results of this want of policy were two-fold: Hundreds of girls and women were every year incarcerated in the county and city jails over the state, in nearly all cases for misdemeanors. The other result was that prosecutions of younger women were reluctantly made and acquittals were frequent.—J. C. Ruppenthal, District Judge, Russell, Kans.

Lynching Statistics.—During the days of slavery negroes were sometimes summarily executed. From 1830 to 1840, from records kept by the *Liberator*, an anti-slavery paper, it appears that the law was generally allowed to take its course, both in cases of murder and rape by negroes. According to the files of the *Liberator* three slaves and one free negro were legally executed for rape, and two slaves legally executed for attempted rape. Near Mobile, Alabama, in May, 1835, two negroes were burned to death for the murder of two children. On April 28, 1836, a negro was burned to death at St. Louis for the killing of a deputy sheriff. From 1850 to 1860, according to the records of the *Liberator*, there appears to have been more of a tendency for the people to take the law

in their own hands. Out of 46 negroes put to death for the murder of owners and overseers, 20 were legally executed and 26 were summarily executed. Nine of these were burned at the stake. For the crime of rape on white women 3 negroes were legally executed, and 4 were burned at the stake.

According to statistics obtained from the files of the New York Times, for the three years, 1871-1873, there were 75 lynchings, 41 white, 32 negroes, one Malay, and 1 Indian. Records show that in 1882 there were 114 persons lynched in the United States; in 1883, 134; in 1884, 211.

Table of Lynchings, 1885-1915.

	White	Negro	Total		White	Negro	Total
1885	106	78	184	1902	10	86	96
1886	67	71	138	1903	18	86	104
1887	42	80	122	1904	4	83	87
1888	47	95	142	1905	5	61	66
1889	81	95	176	1906	8	64	72
1890	37	90	127	1907	3	60	63
1891	71	121	192	1908	7	93	100
1892	100	155	255	1909	14	73	87
1893	46	154	200	1910	9	65	74
1894	56	134	190	1911	8	63	71
1895	59	112	171	1912	4	60	64
1896	51	80	131	1913	1	51	52
1897	44	122	166	1914	3	49	52
1898	25	102	127	1915	13	54	67
1899	23	84	107				
1900	8	107	115	Totals	998	2,735	3,733
1901	28	107	135				

From 80 to 90 per cent of the lynchings are in the South. Less than one-fourth of the lynchings of negroes are due to assaults upon women. The largest number of lynchings are for the crime of murder. Only 11, 10 negroes and 1 white, of those put to death in 1915, or 15 per cent of the total, were charged with rape. Other offenses and number lynched in 1915 were: murder, 16 (4 whites and 12 negroes); killing officers of the law, 9 (3 whites and 6 negroes); wounding officers of the law, 3; clubbing an officer of the law, a family of 4 (father, son, and two daughters); poisoning mules, 3; stealing hogs, 2 (white); disregarding warnings of night raiders, 2 (white); insulting women, 3; entering women's rooms, 2; stealing meat, 1; burglary, 2; robbery, 1; stealing cotton, 1; charged with stealing a cow, 1; furnishing ammunition to a man resisting arrest, 2; beating wife and child, 1 (white); charged with being accessory to the burning of a barn, 1. (From Negro Year Book, 1917.)

There is another side to the lynching of negroes for killing and wounding officers of the law; in the southern states ignorant, vicious, and illiterate white officers take an intense delight in bragging about the number of "niggers" they kill in the course of their careers. An officer of the law who is unable to restrain his temper is an unfit guardian of the peace of the community; the poor, old darkey is pounced upon and severely beaten (many times unjustly), and in many cases innocently, and the dark blot of the above record is an everlasting reproach to the administration of justice in our southern states. The colored

man is intensely loyal; truly American in every fiber; he dynamites no buildings; he is his own worst enemy.

JOSEPH MATTHEW SULLIVAN, *Boston, Mass.*

The Treatment of Crime.—The School of Philanthropy in New York City calls special attention to a new and timely lecture course on *The Treatment of Crime*, to be given on Saturday mornings from 9 to 11, beginning September 29, 1917. This course, including thirty lectures of two hours each and additional special lectures, will present the main facts and theories in the public treatment of delinquency and crime. It will be divided into two general parts: *Crime and Punishment*, given during the first semester, from September 29, 1917, to January 26, 1918; and *The Administration of Criminal Justice*, given during the second semester, from February 9 to May 18. In each semester the course will fall into three divisions.

CRIME AND PUNISHMENT—FIRST SEMESTER

1. *Aims and Methods of Punishment.* Study of the Problem. George W. Kirchwey, former Warden of Sing Sing Prison.
September 29, October 6, 13, 20, 27.
2. *Penal Legislation.* The indeterminate sentence, parole, probation, etc. Ralph W. Gifford, Professor of Law, Columbia University.
November 3, 10, 17, 24, December 8.
3. *Prison Administration.* History, traditional methods, labor, architecture, honor system, self-government, supervision, prison associations, etc. Orlando F. Lewis, General Secretary, Prison Association of New York.
December 15, 22, January 12, 19, 26.

ADMINISTRATION OF CRIMINAL JUSTICE—SECOND SEMESTER

1. *Detection of Crime.* Police and detective systems, theory and practice of police administration. Raymond B. Fosdick, Assistant Director, Bureau of Social Hygiene.
February 9, 16, 23, March 2, 9.
2. *Presentation for Crime.* Indictment, information, etc. Professor William E. Mikell, Dean of the Faculty of Law, University of Pennsylvania.
March 16, 23, April 6, 13.
3. *Judicial Procedure in Criminal Cases.* Courts, jurisdiction, trials, jury, evidence, etc. Edwin R. Keedy, Professor of Law, University of Pennsylvania.
April 20, 27, May 4, 11, 18.

Supplementing the above, there will be a series of lectures, open to the public without charge. Some of the topics follow:

The Threshold of the Prison—A Clearing House for Convicts. Dr. Thomas W. Salmon, Medical Director, National Committee for Mental Hygiene.

The Mind of the Criminal. Dr. Bernard Glueck, Psychiatrist in Sing Sing Prison.

Industrial Education in Prisons. L. A. Wilson, Director Industrial Educational Survey, City of New York.

Prison Dietary. Dr. Emily C. Seaman, Cornell Medical School.

The Suspended Sentence. Hon. William H. Wadhams, Judge, Court of General Sessions, New York City.

Probation. Homer Folks, former President, New York State Probation Commission.

The Detective System. Raymond C. Schindler of National Detective Agency;

Identification of Criminals. Joseph A. Faurot, Inspector, Detective Bureau, New York City.

Criminal Statistics. John Koren, United States Commissioner of Prisons.

Prostitution and the Courts. Maude E. Miner, Secretary, New York Probation and Protective Association.

The Children's Court. Hon. Franklin C. Hoyt, Chief Justice, New York Children's Court.

The Magistrate's Court. Hon. William McAdoo, Chief Magistrate, New York City.

Desirable Reforms in Criminal Administration. James Bronson Reynolds, former Assistant District Attorney, New York County.

This course is included in the regular curriculum of the School of Philanthropy for 1917-1918. In view of its practical value, the course is open to those working with delinquents on payment of a fee of ten dollars for each semester. Such students are auditors, are not required to pass an entrance examination, and are not candidates for a diploma.

The courses as above outlined will be particularly valuable to managers and officers of institutions and private charitable organizations, parole and probation officers, investigators, and others whose work is with delinquents.

Program of the Fifth Annual Meeting of the Illinois State Probation Association (Chicago, Feb. 28).—

An Interesting Experiment in Probation

Mrs. W. E. Symonds, Galesburg

Downstate Probation Problems

Miss. Annie Hinrichsen, Springfield

The Trend of Events

Mr. Charles H. Thorne, Director of the Department of Public Welfare, Springfield

Juvenile Court and Child Welfare in Illinois

† Wilfred S. Reynolds, Superintendent of the Illinois Children's Home and Aid Society

Consolidation of Offices in a Small County

William C. DeWolf, County Judge of Boone County

(a) How Consolidation Works Out

Mr. Jesse F. Hanna, Belvidere

(b) Consolidation in McLean County

Mrs. Nammie M. Dunkin, Bloomington

Adult Probation

Judge John W. Houston, Chief of Adult Probation Department of Cook County

Utilizing Paid and Volunteer Probation Officers in Vermilion County

Lawrence T. Allen, County Judge

Mooseheart

Mr. Mathew P. Adams, Superintendent of Mooseheart

The Reformatory Power of Punishment

Rev. John Webster Melody, D. D.

REVIEWS AND CRITICISMS

THE THIRTEENTH BIENNIAL REPORT OF WHITTIER STATE SCHOOL, WHITTIER, CALIFORNIA. Department of Printing Instruction, Whittier State School, 1917. Pp. 245.

The Biennial Report of the State School at Whittier may, for the purposes of review, be divided into four parts: the general statements of the trustees and superintendent; the diagnostic work of the department of research; the corrective work of the educational department; and the follow-up work of the field-worker and parole officer.

I. General Statements. This institution receives boys who have been convicted of various forms of delinquency, ranging from mere dependency and truancy to serious offenses against property. With the new policy of the administrative officers, there is emphasis upon the careful study of each boy committed to the institution. Each boy thus becomes at once a group of problems. It is important to note that the administration holds neither society nor the boys guiltless in the matter of misdemeanors. In this connection, the superintendent calls attention to general social conditions which tend toward the production of such boys: homes broken up by divorces, separations, and desertions; schools which are often unable to discover or remedy unfortunate conditions; and a career in the streets with practically no restraint or guidance.

In order to meet the individual needs of these boys, the superintendent outlines different types of segregation which need to be made. (1) As to general attitude, there are those who have lacked a fair opportunity, and who are willing to respond when one is afforded; those who by reason of mental inferiority are unable to make a satisfactory response to ordinary opportunities; and those who do not care to respond. (2) As to intelligence, there are the inferior, the average, and the superior. With regard to these types of segregation, it may be said that even the public schools are forced to make some divisions of their pupils of the elementary grades. In the public schools, however the number of "normal" children greatly exceeds the number of either the superior or the inferior; this fact makes segregation far less imperative than in the case of schools dealing with pupils predominantly of either extreme. For the worst cases of both types of segregation, the superintendent recommends treatment in other institutions.

Within the school there are now several divisions of the boys. First, there is the receiving company. When the boys arrive at the school, they enter this company, where they are examined by the officers of the medical, research, and educational departments. While in this company, the boys learn the order of life followed within the school and live under considerably stricter discipline than later—a procedure which accords with the recommendations of leading educators who insist upon "starting right the first day." After this period of detention the boys enter the regular company, unless they are under

fourteen years of age in which case they enter the company of small boys. They remain in this company, unless they become remiss: the lost-privilege company is the real penal farm at Whittier to which such intra-school offenders are committed.

The treatment of disciplinary problems offers suggestions to workers outside the confines of an institution for delinquents. If, for example, corporal punishment can be abolished or avoided for four years in such an institution, what comment must be made regarding the public school which is so organized that such punishment has to be resorted to in case of some of its boys? The superintendent might have much cause for complacency in the adoption of a policy of developing *self-control* instead of *officer-control*: he could hardly achieve more disastrous results than autocratic supervisors have achieved! In carrying out this policy, the superintendent indicates that he is not shifting the responsibility to those who are unable to assume it; instead, there is an attempt to treat each individual case in such a way that the boys may learn that certain acts are wrong not merely because the officers say so, but because society says so. One way in which the results of this policy are shown is in the decreasing number of absences without leave in spite of an increasing number of inmates: more of the boys "will not" rather than "can not."

Another matter may be mentioned before leaving the statement of the superintendent. He has noticed, as others have also, that many of the boys who are returned to institutions have fallen the second time because of inability to secure work or even the necessities of life. In order to provide the boys against such a disaster, many are enabled to stay at Whittier for some time after the end of their terms. During this time they receive wages for their work. Many go back into the world with sufficient means to enable them to withstand a period of enforced idleness and thus more easily make good.

II. The Work of the Department of Research. In the diagnostic work of the school, a clear separation is made of the functions of intelligence and educational tests. The classifications made by both forms of tests are used in determining the trade which the boys shall try to learn while in school. Much attention is given to this classification, because it is believed that the mental level indicates the level of work which may profitably be undertaken. For example, it was determined by investigation that four levels of difficulty can be distinguished in the printing work; mental tests are used as aids in selecting branches of this work for individual boys.

Much of the time of this department must have been devoted to the giving of the Stanford revision of the Binet tests. The results of these tests are shown in the report by the use of very effective forms of graphical presentation. The percentage of cases of each of the five intelligence groups was found to be as follows: feeble-minded, 30; borderline, 27; dull normal, 22; average normal, 18; superior, 3. This kind of study and effective presentation of results should impress upon legislators the necessity of protecting many of these persons from society, and *vice versa*.

The activities of the field-worker, who is a trained sociologist, are

suggestive. Among other forms of data are presented the following: personal history of each delinquent, shown graphically; his "family chart"; and reports upon both his home and neighborhood as measured by score cards. With all these forms of data at hand, the superintendent and teachers might feel rather confident of their ability to plan corrective work, but still other tests are applied to the boys before the class lessons begin.

III. The Corrective Work. The close co-ordination between the educational department and the department of research is shown by the statement that "the school work has been organized and conducted in accordance with intellectual levels of pupils as determined by the application of scientific psychological tests." A later statement indicates that the tests enable the teachers to avoid the futile attempt to have all boys pursue the same kind of work: "As a result of the set tests, it has become evident that fully twenty-five per cent. of the boys in the State School cannot pursue ordinary school work profitably to themselves." In planning the vocational work which is given instead of the regular school work, attention is paid to the relation between intellectual levels and trade aptitudes as mentioned above.

The standard educational tests which have been applied to the boys gave such results as one might have expected. The boys "are far below the average given for the schools" elsewhere, in which the tests have been given. These tests are especially valuable in classifying the boys promptly as to the grades to which they belong.

The occupational training is carried on by thirty instructors, who may be classified as employees for duties other than teaching, in which case the boys may be called student-helpers. The frank statements of these instructors indicate that they have at least one essential qualification for their duties as teachers, that is, practical knowledge. The Federal Board for Vocational Education recommends in its first official bulletin that "evidence of successful experience in a vocation as well as in teaching, should have large weight" in the selections of vocational teachers. If the teachers at Whittier lack in theoretical knowledge, they probably measure up to the requirements of the Federal Board quite as well as many teachers who have merely theoretical knowledge of the practical arts. Excellent illustrations add greatly to the effectiveness of this section of the report.

IV. The Follow-up Work. The fourth section of this review deals with the follow-up work of the field-worker and the parole officer. Owing to the fact that the field-worker had been employed only one year at the time the report was made, little can be said of the results of his work, although much might be said of its possibilities. With his knowledge about the boys' homes and neighborhoods, he can do much in the guidance of boys who are being discharged. As the parole officer points out, a more careful study of boys conditionally discharged can now be undertaken. The superintendent indicates that the school is looking for results in the lives of boys who have left the school when he says, "in very many instances an apology and expression of regret have replaced an effort to justify the wrong," which, as he adds, "is surely a wholesome and encouraging change."

At present, the number of feeble-minded boys and men who are automatically discharged, but who cannot be expected to assume the responsibilities forced upon them by society, increases the percentages to make good.

The report contains much that will interest both specialists and general readers.

Northwestern University.

W. L. UHL.

SCRITTI GIURIDICI VARI (VARIOUS JURIDICAL ESSAYS) by *Dr. Jur. Giovanni Brunetti*, Professor of Law at the Royal Institute of Social Sciences of Florence. Unione Tipografico-Editrice Torinese, 1915. Two volumes, pp. VIII-241 and IX-315.

We regret deeply to be unable to say more about this most interesting collection of various essays, because, important though they are, they are without the province of this Review, since they deal with private and public civil law, international law, history and philosophy of law.

Suffice it to mention the high importance that even from the point of view of criminal law have the essay concerning the self limitation of rights that the state imposes upon itself, the essay upon the interpretation of the law as it is made by the judge, and the study of the Italian law on that vexed European question of the natural child that the father or the mother wants to legitimate.

New York University.

VITTORIO RACCA.

PHILADELPHIA MUNICIPAL COURT, REPORT FOR NINETEEN SIXTEEN.
Pp. 320.

"To dig deep for underlying causes and to treat those who have met with misfortune in a humane and understanding spirit is the task with which we are concerned." This sentence from Judge Brown's introductory statement of the year's work is typical of the spirit of the entire report, and, one is led to believe, of the court itself. This report, unusual in many particulars, is well worth the attention of social service workers connected with courts, as well as of all other students of the social and economic problems of a large city.

This is the first, and indeed the only, instance of the several branches of the various courts of a great city being united under one organization, and working together toward a common purpose. For this reason alone the report is of value, for after three years' experience one is able to arrive at a fairly safe conclusion as to the success of such a plan. This report is an indication that a combination of courts will work successfully, and to the saving of time, money, and efficiency.

Again, in this report is presented the unusual spectacle of a court studying and testing out itself, in an intelligent effort to improve its work. The statistics, differing radically from those collected by most courts, are a valuable contribution to the study of underlying causes of dependency and delinquency, both adult and juvenile. And when these statistics are used by the court itself to

measure its present efficiency and to point the way to greater community service in the future, they are seen to be of the greatest possible significance. Indeed, this one fact more than any other must impress even the most casual reader, and it renders the entire subject matter of vital importance.

The third point of especial interest is the way in which this report indicates necessary changes in the laws to make more useful the existing machinery. There is scarcely a section of the report which does not recommend some new legislation for the purpose of making that branch or department more efficient.

One indication of the effort of the court to become more efficient is the consolidation of certain departments which were organized independently to meet the pressure of an immediate demand. For example, the various branches of the court opened employment divisions as the need for them arose. These are now brought together in one labor bureau, dealing with the employment problem of the court as a whole. One cannot fail to see not only the saving in time and money to be gained by this arrangement, but also the greater opportunity presented for studying this entire problem much more accurately, and no doubt the statistics gathered in the next year will be of increasing value to students of the employment situation. Again the various branches of the court found it necessary to introduce medical work to meet their immediate needs. These are now brought together into a medical department to serve the entire court. The emphasis which this court puts on the employment and medical side of its work is well stated in another sentence from Judge Brown's foreword: "After the unraveling of legal tangles, family disputes, neglect of children, waywardness in boys and girls, nearly always resolve themselves into problems of the economic situation and of the physical condition of the family or individual." With a far-seeing judge, who recognizes these underlying facts, the organizing of these two departments is a promise of increasing efficiency in the whole court system.

One other statement of Judge Brown's must be quoted as an index to the character of the entire report, "While our ideal is that of a court that will be personal and kindly, we have not forgotten that our work must be founded on the bed-rock of science." It is this happy combination of humane treatment with a scientific viewpoint which characterizes the four reports which are of such outstanding interest as to require individual mention.

The Domestic Relations Division in an attempt to determine the reason for cases being brought to its attention has compiled careful and accurate statistics on nativity, occupation, wages, housing, age of clients, and causes of domestic infelicity. The statistics on this last point are of unusual interest. Each complainant is asked, "What do you consider the reason for the trouble at home?" This is followed by, "Are there other troubles, and what are they?" In two years the answers of 5,601 wives and 1,199 husbands have been studied statistically, with the resulting conclusions: that alcoholism alone is not the chief cause assigned by wives for family trouble, but

in almost all cases it is coupled with abusive treatment or language. These constitute the most frequent cause assigned by wives for difficulty. On the other hand, husbands attribute their greatest difficulties to interfering relatives, and next to this, other men.

The following general conclusions are stated as the result of the entire study. The wages of clients of the court are "above the average, and above the minimum required for decent maintenance of a home. The wife works more frequently than does the average woman. The home is a private dwelling, not overcrowded. The wife and husband often appear self-centered, the husband trying to force his views upon the wife by abusive treatment and language, and in many instances the wife retaliating by nagging, and most often having recourse to her family and relatives. The men and women who come to court are not immature, and have usually seen almost ten years of married life. Alcoholism often plays its part as far as the men are concerned."

Added to this interesting study, is given the results of an investigation to determine whether court reconciliations hold; one of the many efforts made by the court to test the lasting value of its service to the community. A careful survey was made of the 1,002 couples reported as reconciled. Of these 310 were not lasting, 87 could not be located, and the remaining 605 lasted from six to eighteen months. The conclusions arrived at are that courts cannot compel a man to fulfil his legal obligations to his family, nor can they preserve the family unit. However, an honest effort to find out causes of trouble and to have each man and woman face the difficulties thus presented may result in a better understanding. Also physical ailments, and economic pressure, which are frequent causes of misunderstanding, may be in great measure relieved by the court's assistance.

The section of the report given over to the relationship between the court and the House of Correction is of great interest on account of the careful study made of women prisoners. Probation officers from the court are assigned to investigate the cases of all prisoners in this institution. While many men were found to have been committed without sufficient cause, few women had been unfairly detained, indeed in many cases they were deserving of a longer commitment. Out of 656 men whose cases were investigated, parole was arranged for 491; of these only 40 were again sentenced to a term in the House of Correction for later offenses. All of these men had been sentenced by the magistrates' courts, where no investigations are made before commitment. That such a large number of men were found eligible to parole after proper investigation of their cases is a good argument for the investigation of complaints in all courts of the city, if sanctioned by law.

The women were generally committed on charges of street-walking or alcoholism, more of the alcoholics appearing as recidivists than of the street-walkers. Here a careful study was made of the age, nativity, occupation, social status, and physical and mental condition of the women. The results show that immigration and inability to speak English and occupations outside the home cannot be held

responsible for the problem of drunken and disorderly women; also that a large number of the women are married and have living children. The women were found to be "socially incompetent and unable to meet satisfactorily the obligations and responsibilities of life." There was an average of one to five physical defects for each woman. Of 100 white women given mental tests 33 were clearly feeble-minded, and 69 showed signs of distinctly abnormal mental condition; only 31 were normal. There was a very close connection between mental condition and the number of commitments. The conclusion drawn after this careful research is the obvious one, that the institution does not reform women. This is due in a measure to the fact that at least 70 per cent of them have "constitutional defects requiring medical rather than correctional treatment." Many recommendations are made which would tend to make the institution more helpful to the inmate. The few who can be benefited by reformatory treatment should have the most approved sort; and above all the needs of each separate individual should be considered, and treatment given accordingly. The general recommendations, while applying to this reformatory alone, are full of suggestive material to superintendents of such institutions in general.

The study of bastardy cases handled in 1916 is a worth-while contribution to the understanding of this serious problem. In this, as in all the studies made, careful and detailed statistics have been compiled in regard to both parents, and these statistics have been studied in relation to the total number of illegitimates born in the entire city, thus adding materially to their value. The way in which these cases are handled is unusual. Whenever the complaint is made at the Municipal Court, there is an investigation before court action. On this account the number of defendants who plead guilty is increasing each month. In so far as possible bastardy cases are all heard on one day each week, and plans are under way to avoid public hearings entirely whenever the defendant has pleaded guilty to the charge. Cash settlements are discouraged, as the court wishes the father to be equally responsible with the mother for a child's support during its entire dependency, which now extends to the age of sixteen. Orders may be made to increase each year, on the basis of the man's increasing earning capacity. The suggestion is made that to keep a woman and child on probation during the entire period of dependency is the only logical way to see that these unfortunate children receive proper care. Two new acts have been prepared, one to allow the payment to wife of child of 65 cents a day for each man who is in prison for failure to support. This act is so worded as to include illegitimate children. The other act will make it possible at any time during the period of dependency to compel a father to support his child. This act makes failure to support a misdemeanor. There are also other laws recommended to make it necessary to refer all bastardy cases to the Municipal Court, and so give an opportunity for investigation, and follow-up work; to make it possible for an illegitimate child to inherit from the estate of a father; and to make failure to support a child born out of wedlock an extraditable offense.

The last study in the report dealing with the families of 1,000 delinquent children, and a like number of families of dependent children, whose cases were heard in the Juvenile Court branch, is well worth careful reading. The object was to determine the social conditions of the families in each group. The statistical tables covering this subject make up almost one-third of the total number in the report. It is unfortunate that the results of this study have not been summarized, for the information contained in this section of the report is of more than ordinary significance, and it should be presented in a way to command greater attention. However, the following data derived from the statistical tables is of especial interest, as it is impossible in this brief review to discuss the detailed items brought to light. In general then, one sees that there is an entirely different problem presented in the handling of the dependent and delinquent child, largely arising from the different social conditions surrounding them. In the first place the majority of dependents are under school age; while most of the delinquents are in school, and classified as truants or retarded to an unusual degree; or else have left school much below the eighth grade, and, therefore, are difficult to find employment for. The fathers of dependents are working in unskilled trades, and at least one-third of the mothers are employed. Bad housing and overcrowding is a minor problem with delinquents. Broken families are a large factor among dependents, in one-half the cases studied children were living in homes other than their own. Where unfortunate home conditions, such as neglect, alcoholism, and tuberculosis were observed, eighty-two per cent of the dependents were listed as against thirty-eight per cent of the delinquents. In other words, delinquency among children is more often an individual problem, while dependency is entirely a family problem, and to do away with it the social status of the home must be improved. While probation officers have recognized the fact for many years, it is valuable to know that statistical data bear out their opinion.

Juvenile Court, Chicago.

HELEN M. JEWELL.

THE UNMARRIED MOTHER. By Percy G. Kammerer. Criminal Science Monograph No. 3. Little, Brown & Co., Boston, 1918. Pp. 342, \$3.00.

The publication of "The Unmarried Mother" marks the distance society has progressed in thought on the subject of illegitimacy from the days when the subject was discussed emotionally and the mother of the illegitimate child was designated as the "Fallen Woman."

The book, based on the study of hundreds of case histories from among which 500 have been selected as vividly illustrating various aspects of the subject, reveals the fact that illegitimacy is a measurable problem which may be segregated and analyzed.

The strength of the book is in its recognition that the act resulting in pregnancy is invariably an expression of the individual's habits and dates from experiences of past years and is not an isolated phenomenon in her life; for instances, "it has frequently been neces-

sary to consider an influence brought to bear upon a girl during a plastic period of her development, sometimes four or five years previous to her pregnancy" . . . and again, "many a young girl has been so accustomed to immorality from an early age, both within her home and her immediate neighborhood, that she falls into habits of sexual laxness without having to overcome the standards which more fortunate girls possess" . . . and again, "it is frequently necessary for several persons to share the same sleeping room, sometimes three or four occupy the same bed. This has normal results in the dissemination of disease. Equally contaminating is the fact that hardly a married couple in a congested neighborhood is able to have a room for itself, so that children are often forced to sleep in the same room with their parents up to and within early adolescence"

To experienced social workers the recognition of the multitude of causes in each instance and emphasis on society's responsibility will come as a balm after unintelligent treatises of the past in which all responsibility was placed on the individual. Mr. Kammerer's arraignment of society and of the economic organization is doubly effective in that it is based on facts and is incidental rather than primary.

The study is comprehensive. The conclusions are in accord with the unexpressed experiences of workers with this group:

1. Steps should be taken for the control and segregation of the mentally abnormal woman during the child bearing age
2. An attempt should be made to enact laws which will reflect the European experience in regard to the unmarried mother. The general emphasis of this legislation should aim towards the care of the child
3. There should be an extension of efforts towards general social betterment
4. There is great need for a revision of the attitude of the public towards questions of sex in general

The book is a text book which should be familiar to every case worker and to individuals identified in any way with social problems; from the introduction by Dr. Healy to the end, it is authoritative and enlightening; carrying statistics, suggestions for advanced legislation, a bibliography and complete index. It should prove of immense help to communities seeking to remove untoward conditions.

It is readable because of the lure of case histories subordinated to theory. The keynote of the book is struck by Dr. Healy in his introduction: "What may we think of punishment or even of neglect of the unmarried mother when we contemplate the essential fact that, whereas most infraction of laws coincides with destructive results, here we have a law-breaker as a constructive agent, giving as concrete evidence of her "misbehavior" nature's highest product, a human being.

Woman's City Club, Chicago.

AMELIA SEARS.

Journal of the American Institute of Criminal Law and Criminology

Official Organ of the American Institute of Criminal Law and Criminology; of the American Prison Association; and of the American Society of Military Law.

Managing Editor, ROBERT H. GAULT,
Associate Professor of Psychology, Northwestern University.
Managing Director, FREDERIC B. CROSSLEY,
Librarian of the Elbert H. Gary Collection of Criminal Law and Criminology, Northwestern University.

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ADDRESS THE

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EDITORIALS

COMING CONFERENCES

Annual Meeting of the American Institute of Criminal Law and
Criminology, Cleveland, Ohio, August 26.

Congress of the American Prison Association, New York City,
October 14-18, inclusive, 1918.

FEDERATION OF SOCIAL WELFARE ORGANIZATIONS

The present need for co-ordination and centralization of activities extends not alone to commercial and industrial life where the urgency of the occasion has been recognized and met in what seems to the outside observer to be a surprisingly effective way, but to the world of philanthropic effort as well. In every large city hundreds of men and women are working for community welfare with admirable devotion through many organizations of a private character, each one of which must get its support from voluntary contributions. Commercial associations, united charities and central councils of social agencies may see to it that there is no serious duplication as far as aims are concerned. Ordinarily no serious overlapping in this respect can be found. But in following up its purpose each organization must undertake more or less effort for education to develop a public sentiment that will support it. Here considerable overlapping of effort occurs, and with it naturally a degree of waste. Most of these organizations must have a salaried executive secretary also, notwithstanding that one such officer could look after the administration of several of them. This is another source of waste.

A federation of privately supported social welfare organizations might solve these difficulties. It is admittedly a debatable question. Its decision can come only from actual trial of the alternatives. No one of these organizations itself can bring about a federation. There are good and sufficient reasons for that proposition. But the War Council or the Council of Defense in every city is so clearly in the public eye and so persuasive in its patriotic appeal that it can try the experiment of federation with the most favorable prospect for success. It should take the initiative in bringing together for discussion a large number of philanthropists and representatives of social welfare organizations. Here the first steps should be taken toward the formation of a grand federation of all social welfare societies in the city or perhaps two or three federations, including in each those institutions that are in their purposes more closely related than others. For instance, all those organizations that are working for the health of the community by promoting in any way public or private sanitation, hygiene or treatment might form one federation and a little study of the problem would show what others could be brought together in another federation.

But the union of these institutions under one office or in two or three divisions will be of no avail unless the federation can have back

of it the sanction of the men and women whose gifts have been the support of the organizations hitherto. They must pledge that their gifts will be made in future only through the financial agent of the federation and that they will respond to no appeals for welfare organizations excepting those that come from his office.

No organization need sacrifice its identity in the federation. It may retain its directors and officers who will from year to year make their plans and their budgets to be submitted to the office of the federation, which will make out its own budget for the whole work when the actual needs of each unit shall have been determined in a general conference, and then undertake raising the funds for apportionment among the members of the union.

Each member can thus spare the energy that it now expends upon a campaign for financial support; many could together share the service of a single executive secretary and certainly all could share to great advantage in the service of a publicity manager for the federation from whom all propaganda shall emanate and who shall be responsible also for such continuous and intensive study of all phases of the problem of social welfare in the community as will make him an authoritative referee whenever a proposal to create a new institution may arise.

As we have already said, the Council of Defense is the one institution that is big enough in the eyes of the people to make an auspicious beginning in the direction of federation of social welfare organizations. But it is for the givers themselves to determine whether, once begun, the movement shall succeed or fail. They must pledge themselves to give only through the office of the federation. The moment they break over and give support to any organization that is not within the federation, or that is denied a place in it or whose independent status is not specifically approved by the federated societies, that moment the experiment is at an end.

ROBERT H. GAULT.

NOTICE

On account of conditions that have been brought about by the war, this Journal will hereafter, during the remaining period of the war, be published as a quarterly. This number takes the place of what would be the July number under the bi-monthly plan. The next issue will appear in November.

EDITORS.

MODERN PENAL METHODS IN OUR ARMY

JOHN H. WIGMORE

[In Vol. VIII, No. 3, of this JOURNAL for September, 1917, there was published an article by Major George V. Strong on the penal methods in use at the U. S. Disciplinary Barracks at Fort Leavenworth, due to the initiative of Major-General Enoch H. Crowder, Judge Advocate General, in 1912.

The extension of these modern scientific and practical methods to the cantonments of the new National Army has been the subject of much attention by some of the officers whose experience has lain in that direction. A number of reports have been received at the Judge Advocate-General's office, from judge advocates and commanding generals of the divisions. The Disciplinary Barracks Regulations, 1915, which were framed only with a view to the Regular Army prisoners at those barracks, would need some revision in order to fit the conditions at the new National Army cantonments. With such revision the system could then be extended to the cantonments by constituting at each of them a branch of the U. S. Disciplinary Barracks (as the statute authorizes the Secretary of War to do).

Such a revision has been prepared for the approval of the Adjutant-General of the Army (under whom the military prisons are now placed by law) and of the Secretary of War. Pending such approval, the revision of the regulations and the extension of the system remains in abeyance (although in a few cantonments its principles are being applied). In the meantime it will be of interest to the readers of the JOURNAL to peruse an explanatory statement, compiled by Lieut.-Col. John H. Wigmore, Judge Advocate, N. A., from memoranda of Major George V. Strong, Judge Advocate, U. S. A., and Major Edgar King, Medical Corps, U. S. A., both of whom were formerly stationed at Fort Leavenworth. Major King may be regarded as the foremost authority in the Army on criminal psychiatry; his personal genius for diagnosing and handling criminal defectives is comparable to that of Dr. William Healy, formerly of the Cook County, Illinois, Juvenile Court.

This statement is an exposition of the principles and methods of the system, and of its proposed application to the new National Army. It may serve as a general guide for those who have not had direct

experience with the system as developed so successfully at the U. S. Disciplinary Barracks during the last six years.—Ed.]

GENERAL SCOPE AND PURPOSE OF THE DISCIPLINARY SYSTEM

1. In the year 1915 the military establishment consisted of some 108,000 men. During that period the total of court-martial cases was, in round numbers:

	Trials	Convictions
General	5,300	5,000
Special	2,500	2,300
Summary	41,000	40,000

The dishonorable discharges totalled 3,600.

With a military establishment now on a footing of more than 800,000 new men, and presumably soon to reach 1,200,000 and more, most of them in cantonments under active preparation for service, the system of penal justice takes on an enormous increase in proportions, and the problem of saving the wastage becomes a serious one and one to be handled with a view to its bearing on the highest efficiency of the service. Applying the above percentage to 1,000,000 men, the probable annual number of convictions may become: General courts-martial, 50,000; special courts-martial, 23,000; summary courts, 400,000, and the total number of dishonorable discharges, 36,000.

To keep down these totals and to save for the fighting army the greatest number of savable and efficient men is the object that has prevailed in establishing at the cantonments the system of disciplinary battalions and disciplinary barracks, which has already proved so effective, after five years' trial, at Fort Leavenworth, Alcatraz, and Fort Jay.

2. The plan vests the handling of actual or potential military offenders in each division in the division commander (under the direction of the Adjutant-General), who in the exercise of his power makes use of the following three offices:

1. The Medical Officer.
2. The Disciplinary Battalion.
3. The Judge Advocate.

These three offices are inter-dependent. To accomplish the desired result we must have, first, the medical officer (a specialist in nervous and mental diseases), to make the preliminary mental and physical examination; this must be checked by correspondence with

the man's family, teachers, employers and associates; his complete history (physical, mental and moral, civil and military) must be established in order that a reasonably correct prognosis may be made for his future. We must have then a judge advocate who can weigh the action of the court that tried the man and act upon the recommendations of the psychiatrist in presenting the case to the reviewing authority; he must consider the welfare of the man, the interests of the government, and the demands of discipline in the service, in his action on the case. Lastly, we must have the disciplinary battalion, where the action taken by the reviewing authority must be put in effect. These three officers are mutually dependent; none can exist and *get its full results* without the others.

3. In each cantonment the following would be the process: A medical department, working in close co-operation with the division judge advocate, will examine all men who are to be tried for serious offenses, and will separate them into two classes: First, those mentally or physically incapable of rendering service; second, those physically and mentally capable of rendering service. All of these latter, except those convicted of really major crimes, who will be comparatively few, will be assigned to the divisional disciplinary barracks, one of which will be established in each division. After training, restore all suitable men to regular organizations, and send all others to Fort Leavenworth or to the special battalions or regiments which may be formed as the need arises.

4. This plan will work out in practice as follows: The path of the offender will be:

1. Commits offense.
2. Confined for trial.
3. Examined mentally and physically.
4. Reported mentally and physically fit, or unfit.
5. If unfit, action according to circumstances, but separated from service in any case.
6. If fit, tried, and sentenced, if found guilty.
7. After sentence, placed in disciplinary battalion (unless guilty of major crime).
8. After three months' training, restoration, either to regular organization or to one of the special units.

5. Experience at Ft. Leavenworth Disciplinary Barracks has demonstrated that the great majority of delinquents fall under one of the two following general classes:

- A. Those demonstrably totally unsuited to remain in the service.
 - 1. Mentally undeveloped men.
 - 2. Insane or feeble-minded.
 - 3. Abnormals, not amenable to ordinary discipline:
 - (a) Drug users,
 - (b) Alcoholics, either periodic or constant;
 - (c) Men having a criminal record in civil life.
 - 4. Abnormals or subnormals not criminally inclined.
 - 5. Miscellaneous unfit types.

B. Those who may under proper handling be saved to the service and become assets instead of liabilities.

As the system of recruiting for the Regular Army has been incapable of keeping such men out of the service, it appears to be a fair assumption that the selective draft system will not be more efficient in keeping them out of the National Army; possibly the percentage of these men will be higher in the National Army than it has been in the Regular Army. The question then arises as to how these actual or potential offenders against military law are to be handled. It is perfectly obvious that all who commit offenses can be totally eliminated, either with or without a period of confinement, by trial by general court-martial or under the provisions of paragraph 148½ Army Regulations; but that method is not economical either as regards men or money.

In order to avoid the wastage indicated above, to save as many potentially good men to the service as possible, and to eliminate the physically, mentally or morally unfit with the least amount of trouble and annoyance to the organization commanders, the medical officer's work, in conjunction with the division judge advocate and a divisional disciplinary battalion, furnishes the most economical method. All habitual offenders, those who have committed serious offenses, and the misfits who are a drag upon the organization, should be sent to the medical officer, whose recommendations in the premises should be submitted to the division judge advocate before the charges are referred to a court for trial, or the case otherwise disposed of. If the psychiatric examination indicates that the man is unfitted for military service, the case can go to trial or the man can be disposed of under A. R. paragraph 148½. If this examination indicates that the man is suitable for military service but is in the wrong branch, it will be a simple matter to transfer him to another organization. If the examination indicates that special training is necessary, it can be given under competent officers in the disciplinary battalion.

6. The operation of this system will improve discipline by insuring intelligent handling of the individual delinquent by trained men, removing the drags and misfits from their organization, saving potentially good men to the service, and saving the Government much money that would otherwise go to the support of a non-productive body of general prisoners whose confinement would result in no good to the individual, and whose incarceration would be unnecessary for disciplinary purposes.

The method does *not* contemplate getting rid of *any* man who can by training or otherwise serve the government in any useful military capacity. On the contrary, the scheme is intended to *save* to the government: (1st) from 25,000 to 40,000 men per year (based on an army of 1,000,000) who under the present system would inevitably be lost, and (2d) to save the government an enormous sum of money that would otherwise be used to maintain in military prisons, in a comparatively unproductive state, a great number of men who, under our present system, would be convicted of military offenses, dishonorably discharged and sentenced to varying periods of confinement, which would serve no good ends as far as the reformation of the individual or maintenance of military discipline is concerned.

GENERAL SUGGESTIONS AS TO THE ACTUAL OPERATION OF A BRANCH DISCIPLINARY BARRACKS AT A CANTONMENT

The stockade should afford facilities for the confinement of all classes of prisoners. It should be of sufficient capacity to care for the number of prisoners to be expected during the six months or so in which a division is likely to be in camp, supposing that only a moderate number will be sent away.

Assuming that the institution is in operation, what will be the treatment of the man confined awaiting trial on general charges? Immediately after his confinement, while the charges are being prepared (say, in the first two days), he should be sent to the medical officer who is a specialist in nervous and mental diseases. This medical officer should interview him in private, questioning him tactfully, and endeavoring to get his confidence; the prisoner being given to understand that statements which he makes in this medical examination will not be used against him at his trial, but that they may be used in determining his fitness or unfitness to remain in the service, or in determining in what capacity he should remain in the service.

The medical examination should include physical and mental

examination, and should secure a complete history of the patient's life, on a prepared form. The form in use at Fort Leavenworth Disciplinary Barracks is a result of long experience, and is an excellent one. This form, containing a full report of the examination, including the history, should be filed as a permanent record, and a copy of it forwarded at once to the division commander, to enable the judge advocate to have the advantage of the report in deciding whether or not the prisoner shall be brought to trial.

- This report may show a man to be physically unfit. It will do so in a considerable number of cases, despite an already careful examination on acceptance for service. Cases reported as physically unfit, if the unfitness be definite, should ordinarily not be tried, unless they are charged with a particularly vicious act. Physically unfit men are a great nuisance and burden in any institution handling delinquents; the interests of the service will be better served by discharging the man than by retaining him. Nor should the mentally unfit be brought to trial. No benefit is gained by it. This fairly large percentage of men should be separated from the service at once, with or without confinement in the asylum for the insane.

Those found mentally and physically fit should be considered for trial in the usual way. If convicted and sentenced, they will enter upon what may be called a stage of probation.

The report of the medical officer, supplemented by correspondence in suitable cases, will give the commandant of the barracks a very good insight into the type of man he is dealing with. When the commandant comes to know his medical officer well, he will find in most cases that he can very well leave to the medical officer the selection of the men for disciplinary training with a view to further service. To accomplish this, all the commandant need do is to issue general orders outlining, in a general way, what are suitable men for the battalion, and to require the medical officer then to indicate from his records and study which men come within these classes.

Within (say) two weeks after the men begin serving their sentences, all those considered fit should be put into disciplinary companies for training. Here they will be closely observed by the officers and non-commissioned officers, who should be able to form a quite satisfactory opinion as to their fitness for further service, within the period of three months which their training should include. At the end of the three months the commandant will require consideration of each man by a company or battalion commander, with a written report stating whether or not they recommend his restoration to duty,

and if they do not recommend restoration to duty, whether they recommend further training in the battalion or reduction to numbers to finish their sentence. The men should then be sent again to the medical officer for a final examination. This will give the commandant an excellent insight into the man's character, so that he should be able at a short interview to form an opinion as to whether or not he desires to recommend the restoration of the man to an honorable duty status. Three months will probably be long enough ordinarily to train these men in the battalion.

They should not be asked, at the close of that period, whether or not they want to go back to duty. The training can be made a part of the qualifications for return to duty, but the mere fact that a man does not want to return to the army should not permit him to avoid restoration after an offense, if he is a type who could make a good soldier if he wishes. In other words, it should be made very difficult for a man mentally and physically capable to secure release from service by committing an offense. By not executing the dishonorable discharges imposed by courts, it will be a simple matter to turn them into duty at the proper time.

Regarding men who are convicted of misdemeanors of a non-military nature, either alone or in connection with military offenses, this class, under Par. 16, Clause 2, of the Regulations, may be considered for further service. By study of the case, the commandant will be able to separate those whose moral character is so bad as to make it probable that they would continue to be offenders. In many instances such men can and should be kept on probationary discipline, instead of being placed irrevocably in the class with persons guilty of felony. Whatever may be the dictates of peace-time policy, there are several reasons for this policy in war-time. In the first place, the offense is one which may not be due to ultimate unfitness for military service, but to casual temptation and to inexperience in military standards of honor; and the circumstances and history may put this beyond a doubt. In the second place, this measure will remove the inducement, often operating, to commit a misdemeanor with the object of escaping military service. In the present war conditions, it is especially important to remove all possibility of this motive. And finally, the prime purpose of saving all possible material for the fighting forces should dominate the penal system; and there is sure to be a lot of fighting capacity in this class. Should such offenders be numerous, a special disciplinary company can be formed, to be employed for special service on arrival at the front.

Men convicted of serious offenses, whether military or non-military, should not be returned to duty. The character of offenses which should bar absolutely will be apparent to officers, and will be such offenses as usually carry with them very severe penalties.

The question of forming special organizations to take care of the men who are considered too bad to go back into the regular company should be considered. It might be worth while. A better opinion of this can be formed when the disciplinary barracks branches are in operation and the number and character of prisoners to be cared for is determined. It is probable that those in charge of the cantonment disciplinary barracks will, by the proper form of encouragement and training, be able to return a very large number (presumably half of the men convicted by a general court-martial) to an honorable place in the ranks, at or before the time the division sails. There will probably be a certain number of men who are more or less chronic absentees, who nevertheless if once taken abroad, would be satisfactory soldiers. The question of holding these men under confinement until shortly before their organization sails and then restoring them to duty should be considered.

Garrison Prisoners. If the experience at the camps is the same as that at posts of the regular army, there will be a very considerable number of men who will be serving guardhouse sentences of from three to six months given by the inferior courts. It is believed that the imposition of these sentences has heretofore proved more of a detriment to discipline than a help, not because the man should not be temporarily deprived of his liberty of action and required to perform some hard labor, but because in the usual guardhouse the soldier has lost touch with his military training, and opportunity has been given him to stagnate, to perhaps form bad associations, and to lose interest in his military work. By placing these garrison prisoners, however, under disciplinary barracks regime, with a half day's very intensive drilling and instruction each morning, a half day's work in the afternoon, and deprivation of liberty in the guardhouse, it does not become a particularly attractive place; for the work is quite as hard as in a company (which has not always been the case heretofore), and with a restriction of privileges it becomes a real punishment. This should tend to deter men. Another very great advantage is that by the collection of these men into groups for the whole division, with a very careful study by a medical officer as well as the line officer, it has created a suitable opportunity to weed out of the companies themselves chronic misfits who are such a drag and detriment to an organization.

By the examination on entrance into the disciplinary organization, the training officers learn which men it is that are slow in learning, which men it is that are lazy, which men do not try, etc., and by bestowing a little attention on them may improve them. The same careful observation will determine before the garrison prisoner's sentence expires those who are physically and mentally unfit. It thus creates an agency making it really easy to discover and eliminate the percentage of defectives early, who would otherwise remain indefinitely in companies to the detriment of everybody.

Another point of importance is that by the more or less individual training given in the battalion and by the careful individual study made, it will be found that a considerable number of men have got into the guardhouse because they were misfits in the position they were placed in the company. By correction of this they may do well on release.

The commandant and other officers of the disciplinary barracks, by the intensive study made, will thus be able largely to weed out the unfit elements, whether the unfitness be moral, physical, mental or what not, making this institution an excellent winnowing machine, so that no man need return to his regular company unless he is really worth while.

In the original plans for these disciplinary units at cantonments and at camps it was considered to be possible to train the inapts, who had committed offenses, along with the disciplinary battalions. Further consideration of the plan, and conversations with men having considerable experience, have modified this view. It now seems undesirable to do this, even though the law permitted it. The inapt who commits no offense is probably a plodder, perhaps rather easily influenced by more active minds. While he could get the necessary training at the disciplinary battalion, it would seem better to form a few companies for the special training of the inapts, into which could be gathered all of this class from the various units of the cantonment. This is directly in line with modern ideas and should result in very great good. French experience has found that there is a certain type of recruit who is a very slow thinker, and if placed in a company made of quicker thinkers he is apt to be singled out as feeble-minded, whereas he is not really feeble-minded at all. He is a slower witted man, and takes a longer time, more patience, and keener instructors. By collecting these men in companies, the level of aptitude for each is about the same, and we are told that these men then do very well. This contains a lesson for us; for no doubt in every regiment there

will be an appreciable number who are slow. They cannot keep up with the regular course of training and their chances of becoming really useful will be very good indeed if placed in special training companies.

It may seem to some officers who have not had detailed experience in this work that it signifies taking a great deal of trouble for a lot of men who (many would say) are not worth it. But if one stops to think that the offender class, plus the inapt class, may reach ten per cent of the total of the cantonment, and that it is probable that this plan will save to the division, as useful men, not less than half of these, the effort would appear to be well worth while. The details of administration are not difficult. All that is really required is the spirit of co-operation between the various agencies concerned; all officers realizing that no one is sufficient alone. The medical officer fulfills certain parts in the scheme which no one else can do. The line officer has certain functions which he alone can perform. The judge advocate of a division must be a man of broad principles, and must master the details of the whole scheme, in order that the action recommended by him to the division commander may be sound. This method of handling prisoners is much more expeditious than the old methods. It creates a machinery distinctly for this purpose, and does away with a lot of vexatious delays by making certain men directly responsible for certain things and requiring them to follow certain generally outlined methods. The proper carrying out of this proposed plan will prove beyond a doubt to the entire military service its very great advantages over methods previously used.

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CRIMINAL COURTS AND LAW IN EARLY (UPPER) CANADA

WILLIAM RENWICK RIDDELL¹

After the conquest of Canada in 1759-60 and its formal cession in 1763 a Province of Quebec was established by the royal proclamation of October 7, 1763.² The western boundary of this province was a line drawn from the point at which the present international line meets the River St. Lawrence to the south end of Lake Nipissing. The western boundary was in 1774 removed much further west by the Quebec Act;³ the southern boundary ran along the Great Lakes, down the side of Pennsylvania and along the Ohio River to the Mississippi, and the western boundary ran "northward"⁴ from that point to the Hudson's Bay Company's territories. This brought into the province all the territory now the Province of Ontario, Michigan, Wisconsin, etc.

By the Treaty of Paris, 1783, all to the right of the Great Lakes was allotted to the United States; but Britain retained for some years possession of some territory on Lake Huron and the connecting straits (including Detroit),⁵ and did not surrender this to the United

¹ LL. D., F. R. S. C., &c., Justice of the Supreme Court of Ontario.

² This Proclamation will be found in the Report of the Ontario Archives for 1906, pp. 2 sqq.; also in Shortt & Doughty, *Constitutional Documents, 1759-1791*, Canadian Archives Reports, 1907 (Sessional Paper No. 18), pp. 119 sqq.

³ (1774) 14 George III, c. 85 (Imp.).

⁴ The word "Northward" gave rise long after to a dispute between the Dominion of Canada and the Province of Ontario. The Dominion created a Province (Manitoba) with its eastern boundary the western boundary of Ontario. Ontario had succeeded to all the territory of the Province of Quebec as constituted by the Act of 1774 north of the United States, and claimed that "Northward" meant "Northward along the Mississippi." The Dominion claimed that "Northward" meant "due North." On the matter being referred to arbitration, the arbitrators (1878) found in favor of Ontario. The Judicial Committee of the Privy Council agreed with this finding, and on petition of the Parliament of Canada the question was placed beyond controversy by the Act (1889) 52, 53, Vic., c. 28 (Imp.).

⁵ Without discussing the merits of the controversy, it will be sufficient here to state the facts. The Treaty of Paris, September 3, 1783, by Art. IV, expressly provided that "creditors on either side shall meet no lawful impediment to the recovery of the full value in sterling money of all bona fide debts heretofore contracted." Some of the States passed legislation (declared valid by the local courts) which prevented British creditors from recovering from American debtors. The offending States refused to repeal these laws, and the United States could not compel them to do so. To the many representations made by the United States concerning the retention by Britain of the border posts (Michillimackinac, Detroit, Buffalo, Niagara, Oswego, Oswegatchie, Point au Fer and Dutchman's Point), the answer was returned that Britain

States till 1796. In 1788 Lord Dorchester formed four Districts, Luneburg, Mecklenburg, Nassau and Hesse, out of the western portion of the Province of Quebec.⁶ Those Districts included all of what is now the Province of Ontario and also de facto some of Michigan and Wisconsin and that territory I call upper Canada.⁷

The English law, criminal as well as civil, was introduced by the royal proclamation of 1763 above mentioned; and while by the Quebec Act of 1774 the ancient French Canadian law was reintroduced in civil matters, the English criminal law remained in full force except as modified by provincial legislation.

In each of the four Districts there was erected a Court of Common Pleas, with full civil jurisdiction; each District had also a Prerogative Court for probate of wills; etc., the judges of the one court being also judges of the other. In criminal matters the courts were modeled on the English system, as in civil matters (except as to probate and administration) they were not.

In each District there was a Commission of the Peace;⁸ by the law of England the justices of the peace named in the commission were empowered to sit as a Court of General Quarter Sessions of the Peace, a criminal court with extensive jurisdiction, at which cases

would remain in possession of the territory until redress should be given to British subjects. At length John Jay went to England and succeeded in obtaining a treaty, November 19, 1794 (commonly known as Jay's Treaty), by which the United States agreed to pay these debts and Britain to give up the retained territory. Britain carried out her part August, 1796, and the United States in 1802 paid £600,000 in full.

⁶ The Proclamation (or Patent) will be found in the Ont. Arch. Report (1906), pp. 157, 158; Shortt & Doughty, p. 650. It may be added that these German names were changed to Eastern, Midland, Home and Western by the First Parliament of Upper Canada in 1792, 32 Geo. III, c. 8 (U. C.). They included the settlements around Cornwall, Kingston, Niagara and Detroit.

⁷ In 1791 the former Province of Quebec was divided into the Provinces of Lower Canada and Upper Canada, the latter being the same territory as what I call "upper Canada," but this appellation I employ to indicate the territory as well before as after Upper Canada came into existence.

⁸ It may be interesting to give the Commission in full for the District of Hesse (including Detroit, Michillimackinac, etc.):

(Signed)

DORCHESTER, G.

FIAT

General Commission of the Peace
for the District of Hesse.

Recorded in the Office of Enrolment
at Quebec the 28th day July, 1788, in
the third Reg. of Letters patent and
Commissions. Folio 257.

G. POWNALL.

GEORGE the third by the grace of God of Great Britain, France and Ireland, King, Defender of the faith, &c. TO OUR trusty and Well-beloved Henry Hope, Lieut. Governor, William Smith, Chief Justice, Hugh Finlay, Thomas Dunn, Edward Harrison, John Collins, Adam Mabane, Joseph Gaspard Chaussegros Delery, George Pownall, Picotte de Bellestre, John Fraser, Henry Caldwell, William Grant, Paul Rock St. Ours, Francois Baby, Joseph

de Longueuil, Samuel Holland, George Davison, Sir John Johnson, Bart: Charles de Lanaudiere, Rene Amable Boucherville and Le Comte Dupre, Members of Our Council for Our Province of Quebec, and to Our loving subjects, Alexander Grant William Lamotte, St. Martin Adhemar, William Macomb of Detroit, Joincaire de Chabot, Alexander Maisenville of the opposite side of the River at Detroit, William Caldwell, Mathew Elliot of the new Settlement at the mouth of the River Detroit & Benac Porlier of River Raisin Esquires.

GREETING. KNOW YE that WE have assigned you jointly and severally and every one of you Our Justices to keep Our Peace in Our District of Hesse in Our said Province of Quebec, and to keep and cause to be kept, all Ordinances Statutes and Laws for the good of the peace and for preservation of the same; and for the quiet rule and Government of Our People, made in all and singular their articles in Our said District of Hesse, (as well within liberties as without) according to the force form & effect of the same; And to chastise and punish all persons that offend against the form of those Ordinances Statutes and Laws, or any of them in the District aforesaid, as it ought to be done according to the form and purport of those Laws, Ordinances & Statutes; and to cause to come before you or any of you, all those who to anyone or more of Our People concerning their bodies or the Firing of their Houses have used threats to find sufficient security for the Peace or their good behaviour towards US and Our people and if they shall refuse to find such security then to cause them to be safely kept in Our prisons until they shall find such security. We have also assigned you and every two or more of you, of whom any one of you the aforesaid Henry Hope, William Smith, Hugh Findlay, Thomas Dunn, Edward Harrison, John Collins, Adam Mabane, Joseph Gaspard Chaussegros Delery, George Pownall, Picotté de Bellestre, John Fraser, Henry Caldwell, William Grant, Paul Rock Saint Ours, Francois Baby, Joseph de Longueuil, Samuel Holland, George Davison, Sir John Johnson, Bart: Charles de Lanaudiere, René Amable Boucherville and Le Comte Dupre, Members of Our Council for Our said Province, Alexander Grant Guillaume Lamotte and St. Martin Adhemar of Detroit—We will shall be one, Our Justices to enquire the truth more fully by the oath of good and lawful men of the District aforesaid by whom the truth of the matter may be the better known of all, and all manner of Felonies, poisonings, Enchantments, Sorceries, Art Magick, Trespass, forestallings, regratings, engrossings, and extortions whatsoever and of all singular other crimes and offences, of which the Justices of Our Peace may or ought lawfully to enquire by whomsoever & after what manner soever in the said District done or perpetrated or which, or which shall happen to be there done or attempted; and also of all those who in the aforesaid district in Companies against Our Peace in disturbance of Our People with armed force have gone or rode or hereafter shall presume to go or ride. And also of all those who have there lain in wait or hereafter shall presume to lie in wait to maim or cut or kill Our people, and also of all victuallers and all and singular other persons who in the abuse of weights or measures, or in selling victuals against the form of the Ordinances, Statutes and Laws, of Our said Province, or any one of them in that behalf made for the Common Benefit of Our said province, and Our people thereof, have offended or attempted, or hereafter shall presume in the said District to offend or attempt And also of all Sheriffs, Bailiffs, Stewards, Constables, Keepers of Gaols and other Officers who in the execution of their Offices, about the premises, or any of them have unduly behaved themselves or hereafter shall presume to behave themselves unduly or have been or shall happen hereafter to be careless, remiss or negligent, in Our District aforesaid, and of all and singular articles and circumstances and all other things whatsoever that concern the premises or any of them by whomsoever and after what manner soever in Our aforesaid District done or perpetrated, or which hereafter shall there happen to be done or attempted in what manner soever; And to inspect all Indictments, whatsoever, so before you, or any of you taken or to be taken or before others late Our Justices of the Peace in the aforesaid District made or taken and not yet determined, and to make and continue processes thereupon against all and singular the persons so indicted, or whom before you hereafter shall happen to be indicted, until they can be taken, surrender themselves or be out-lawed, and

were tried by a jury. By both English and Canadian legislation these courts were to sit four times in each year.⁹ While their com-

to hear and determine all and singular the Felonies, Poisonings, Inchantments, Sorceries, Art Magick, Trespasses, Forestallings, Regratings, engrossings, extortions, unlawful assemblies, indictments aforesaid and all and singular other the premises according to the Laws and Statutes of England and the Laws of Our said Province, as in the like cases it has been accustomed or ought to be done:—

AND the same offenders and every of them for their Offences by Fines, Ransome, Amerciaments, Forfeitures and other means, as according to the Law and Custom of England or form of the Ordinances and Statutes aforesaid and the laws of the said Province, it has been accustomed or ought to be done to Chastise and punish. PROVIDED Always that if a case of difficulty upon the determination of any the premises before you or any two or more of you shall happen to arise; then let Judgment in nowise be given thereon before you or any two or more of you unless in the presence of Our Chief Justice of Our Court of Kings Bench of Our Province aforesaid or of one, or more of Our Justices specially appointed to hold the assizes in the aforesaid District, and therefore WE command you & every of you that to keeping the Peace Ordinances, Statutes and all and singular other the premises you diligently apply yourselves, and at certain days & places which you or any such two or more of you as is aforesaid, shall for these purposes appoint into the—Ye make enquiries and all and singular the Premises hear and determine and perform and fulfil them in the aforesaid form doing therein what to Justice appertains according to the Law and Customs of England and the Ordinances as above mentioned.

SAVING TO us the Amerciaments and other things to Us therefrom belonging; And WE Command by the tenor of these Present OUR Sheriff of the said District of Hesse that at certain days and places which you or any such two or more or you as is aforesaid shall make known to him, he cause to come before you, or such two or more of you as aforesaid, so many and such good and Lawful men of this District and Bailiwick (as well within liberties as without) by whom the truth of the matter in the premises shall be the better known and enquired into; And lastly We Command the Keeper of the Rolls of Our Peace of the said District, that he bring before you and your said Fellows at the days and places aforesaid, the writs, precepts, processes, and Indictments aforesaid, that they may be inspected and by a due course determined as is aforesaid.

IN TESTIMONY whereof WE have caused these OUR Letters to be made patent and the Great Seal of Our said Province to be thereunto affixed, and the same to be recorded in one of the Books of Patents in our Register's Office of Enrollments of Our said Province Remaining.

WITNESS OUR trusty and well beloved Guy Lord Dorchester Our Captain General and Governor in Chief of Our said Province At Our Castle of Saint Lewis in Our City of Quebec this twenty-fourth day of July in the year of Our Lord One Thousand seven hundred and eight eight and of Our Reign the Twenty eighth.

Dedimus potestatem

to Duperon Baby

Alexander McKee and

William Robertson Esquires

Justices of the Court

of Common Pleas for the

District of Hesse in Our

Province of Quebec to administer

Oaths. Tested at the Castle

of St. Lewis in Quebec 24th July

28 GEO III.

Signed D. G.

(Signed) GEO. POWNALL, Secy.

⁹ 36 Edw. III, c. 12; 12 Ric. II, c. 10; 2 Hen. V, St. 1, c. 4. The Quebec Ordinances are (1777) 17 Geo. III. c. 5; (1789) 29 Geo. III, c. 3.

mission gave them power to inquire of all manner of felonies and trespasses, they had, before the conquest of Canada, ceased to try capital cases,¹⁰ and the custom was to remit such cases for a more solemn trial at the Assizes before the Commissioners of Oyer and Terminer and General Gaol Delivery.¹¹

In England at this time and for centuries before a criminal case could be tried before the Court of King's Bench itself; but in the vast majority of cases the trial was before Commissioners of Oyer and Terminer and General Gaol Delivery, and such commissions were granted to the judges of assize so that they might try criminal cases on their circuits.¹²

In the Province of Quebec there was erected in 1777 a court of criminal jurisdiction, the Court of King's Bench, held before the chief justice of the province (or commissioners appointed for execut-

¹⁰ That previously, e. g. in the Tudor times, the Quarter Sessions had tried thousands of capital crimes and caused the hanging of thousands of thieves, etc., there can be no doubt. There is a tradition that the Quarter Sessions of the District of Mecklenberg (at Kingston) tried and sentenced to death a supposed thief, which sentence was duly carried out, and the very tree where the innocent man was hanged was long pointed out. But this is certainly a myth.

¹¹ See Blackstone's Commentaries, Book IV, pp. 268, 269.

¹² A Commission of Oyer and Terminer authorized the Commissioner to try criminal cases on which the True Bill was found in his own Court; that of General Gaol Delivery to try all persons in the Gaol by whomsoever the True Bill was found. In practice they were united. An actual Commission is here copied.

FIAT

Recorded in the Office of Enrollments
at Quebec the 20th Day of January,
1791, in the third Register of Letters
Patent and Commissions, folio 472.

GEO. POWNALL.

(Signed)
DORCHESTER, Gov.

GEORGE THE THIRD, by the Grace of God, of Great Britain, France and Ireland, KING, Defender of the Faith, and so forth. TO OUR Trusty and Well-beloved William Dummer Powell OUR first Justice of OUR Court of Common Pleas of and in OUR District of Hesse in OUR Province of Quebec, and to William Lamothe, St. Martin Adhemar, William McComb, John Askin and George Meldrum Esquires, Justices of the Peace for the said District.

GREETING: KNOW YE that WE have assigned you and any three of you (of whom WE will that you the said William Dummer Powell be one) to inquire by the Oath of Good and Lawful Men of the District aforesaid by whom the truth of the matter may be the better known, and by other ways, methods and means whereby you can or may the better know, as well within liberties as without, more fully the truth of all Treasons, Misprisions of Treason, Insurrections, Rebellions, Murders, Felonies, Manslaughters, Killings, Burglaries, Rapes of Women, Unlawful Meetings and Conventicles, Unlawful Uttering of Words, Unlawful Assemblies, Misprisons, Confederacies, False Allegations, Trespasses, Riots, Routs, Retentions, Escapes, Contempts, Falseties, Negligencies, Concealments, Maintenances, Oppressions, Champarties, Deceits, and all other Misdeeds, Offences and Injuries whatsoever, and also the accessories of the same within the District aforesaid, as well within Liberties as without, by whomsoever and howsoever done, perpetrated and committed, and by whom and to whom, when, how and in what manner, and of all other Articles and Circumstances whatsoever, the premises and every or any of them howsoever concern-

ing the office of chief justice) at Quebec and Montreal,¹⁸ but the same ordinance reserved the power of granting commissions of oyer and terminer and general gaol delivery. Such commissions were not necessary so long as the Province of Quebec had its original boundaries, but when it was enlarged by the Quebec Act of 1774 it was obvious that the time would come when it would not be feasible to try all important criminal cases in Quebec or Montreal.

ing, and the said Treasons and other the premises according to the Law and Custom of England and the Laws of this Province for this time to hear and determine. And therefore WE command you that at certain days and places which you or any three of you (whereof WE will that you the said William Dummer Powell be one) shall for this purpose appoint within and for the space of six Calendar Months from the day of the Date of these Presents, you do concerning the Premises make diligent inquiry, and all and Singular the Premises hear and determine and those things do and fulfil in form aforesaid which are and ought to be done and to Justice doth appertain according to the Law and Custom of England and the Laws of OUR said Province, SAVING to us OUR Amerciaments and other things to us thereupon belonging. For WE have Commanded OUR Sheriff of the said District that at certain Days and places which you or any three of you (of whom WE will that you the said William Dummer Powell be one) shall make known within and for the space of Six Calendar Months from the day of the Date of these Presents he cause to come before you or any three of you (of whom WE will that you the said William Dummer Powell be one) such and so many Good and Lawful Men of his Bailiwick (as well within liberties as without) by whom the truth of the Premises may be the better inquired of and known,

AND KNOW YE further that WE have also Constituted and assigned you or any three of you (of whom WE will that you the said William Dummer Powell be one) OUR Justices the Goal of OUR said District of the Prisoners in the same being for this time to deliver. AND therefore WE command you that at a certain Day which you or any three of you (of whom WE will that you the said William Dummer Powell be one) shall appoint you do meet at Detroit, OUR GOAL of OUR said District to deliver, and to do thereupon what to Justice may appertain, according to the Law and Custom of England and the Laws of OUR said Province, SAVING TO US OUR Amerciaments and other things to us thereupon belonging. For WE have Commanded and hereby command OUR Sheriff of OUR District of Hesse that at a certain Day which you or any three of you (of whom WE will that you the said William Dummer Powell be one) to him shall make known, all the Prisoners of the said Goal and their attachments before you or any three of you (of whom WE will that you the said William Dummer Powell be one) there he cause to come. In TESTIMONY whereof WE have caused these OUR Letters to be made Patent and the Great Seal of OUR said Province of Quebec to be hereunto affixed. WITNESS OUR Trusty and Well-beloved GUY LORD DORCHESTER OUR Captain General and Governor in Chief of OUR said Province. AT OUR CASTLE of Saint Lewis in OUR City of Quebec this Twentieth Day of January in the year of OUR LORD one thousand seven hundred and ninety-one and of OUR REIGN the Thirty-first.

(Signed) D. G.

(Signed) GEO. POWNALL, Sec'y.

(The Commission of Special Goal Delivery to try special cases only was very rare in either England or Canada and needs no comment.) The history of these Commissions is touched on in my article, "New Trial at the Common Law," *Yale Law Journal*, Nov., 1916, pp. 57, 58.

¹⁸ Ordinance of March 17, 1777; 17 Geo. III, c. 5. There had been a Court of King's Bench of both civil and criminal jurisdiction erected by Governor Murray in 1764, September 17, but this was abolished by the Quebec Act of 1774.

In Detroit, indeed, the justice of peace, Philip Dejean, was permitted to try capital cases with a jury; he had been commissioned in 1767 before Detroit became part of the province, and was allowed to continue his office, but he went too far, for we find him trying capital cases and sentencing at least one convict to death.¹⁴

When the independence of the United States was acknowledged in 1783 a large number of loyalists—the Cavaliers of the eighteenth

¹⁴ As to Detroit and this Justice of the Peace, I have said in "The First Judge at Detroit and His Court," an address before the Michigan Bar Association:

"Turning now to the state of affairs at Detroit. From the surrender of Detroit by the French for a few years the occupation by the British was by force of arms and conquest; but the Treaty of 1763 made legal what had previously been by force.

"During this period of two or three years, there does not seem to have been anything in the way of civil courts, the British commandants following the examples of their French predecessors.

"They took it upon themselves after the formal cession to commission Justices of the Peace. It is said that Gabriel Le Grand acted under some commission of the kind as early as 1763.

"In the 'Pontiac Manuscript,' under date May 20th, 1763, mention is made of 'Mr. Le Grand, who has been substituted as judge in the place of Mr. St. Cosme,' and he seems to have been acting as judge in 1765.

"Two years later Philip Dejean received a similar commission. In the same year, 1767, the Commandant Major Bayard gave Dejean another commission as 'Second Judge' to hold a 'Tempery Court of Justice to be held twice in every month at Detroit, to Decide on all actions of Debt, Bond, Bills, Contracts and Trespasses above the value of £5 New York Currency.'" (In the New York Currency, a shilling was 12 1-2 cents—a York shilling or "Yorker," still in vogue on the north shore of Lake Ontario in my boyhood, fifty years ago; £1 equals 20s. equals \$2.50).

"When Henry Hamilton was sent as Lieutenant Governor in 1775, he allowed Dejean to continue in his Court as Justice of the Peace, and Dejean went far beyond the limits of the authority of a Justice of the Peace. We are told that a man and woman were tried in 1776 by Dejean with a jury, six English and six French, on a charge of arson and larceny, but the jury 'doubted of the arson.' The man was executed, it is said, by the hands of the woman, who thus bought her freedom. The attention of the authorities at Quebec was drawn to the state of matters in Detroit by the extraordinary proceedings, and warrants were issued for Governor and Justice. The Grand Jury at the Court of King's Bench at Montreal on Monday, September 7th, 1778, presented Dejean for 'divers unjust & illegal Terranical & felonious Acts' during 1775, 1776 and 1777 at Detroit; and Henry Hamilton the Governor for that he 'tolerated, suffered and permitted the same under the Government, guidance and direction'—hence the warrant.

"The stirring times following the American invasion of Quebec were on, and the offenders escaped immediate punishment.

"By letter of April 16th, 1779, Lord George Germain, Secretary of State for the Colonies (afterwards Viscount Sackville), wrote: 'The presentments of the Grand Jury at Montreal against Lieut.-Gov. Hamilton and Mr. Dejean are expressive of a greater degree of jealousy than the transaction complained of in the then circumstances of the Province appear to warrant. Such stretches of authority are, however, only to be excused by unavoidable necessity and the justness and fitness of the occasion.' He therefore ordered that the Chief Justice should examine the evidence of 'The Criminal's Guilt, and if he be of the opinion that he merited the Punishment . . . tho' irregularly inflicted . . . a 'nolle prosequi' should be entered. This was done."

century—came north, and it was to meet their requirements that the new Districts were formed. Commissions of oyer and terminer and general gaol delivery were issued for all these Districts.

Except Hesse, none of the new Districts had a gaol, (the gaol at Detroit was of long standing and constantly in use). It was accordingly provided that where the Commissioners of Oyer and Terminer and General Gaol Delivery thought it unsafe to keep within their District any prisoner convicted of a capital offense, they should send him to a gaol in the old Districts. It was also provided that if the chief justice of the province should not be one of the commissioners, execution of the sentence (if extending to life or limb or any greater fine than £25 sterling) should be stayed until the pleasure of the governor should be known; and that a full report of the evidence, the rulings, the charge to the jury, etc., should be sent to the governor for his information.

The Quarter Sessions were also to send to the governor the substance of the evidence, etc., whenever they imposed a fine of £25 sterling.

The same deficiency in gaol accommodation induced the Council at Quebec to change the law as to larceny.¹⁵ In England at this time petty (or petit) larceny was the stealing of goods not above the value of one shilling,¹⁶ the punishment for which was, at the common law, whipping, or by statute¹⁷ transportation for seven years; grand larceny, the stealing of goods above the value of one shilling, was punishable with death, although by the "benefit of clergy,"¹⁸ the thief would in most cases escape for the first offense.

¹⁵ All these provisions are to be found in the Ordinances of April 30, 1789, 29 George III, c. 3.

¹⁶ Blackstone's Commentaries, Bk. IV, p. 229.

¹⁷ (1717) 4 George I, c. 11. See Blackstone's Commentaries, Bk. IV, p. 238.

¹⁸ A second conviction for grand larceny meant felony "without benefit of clergy." No lawyer is at all likely to think with some popular writers that this means "without the benefit of clerical attention and advice." Of course, it originally was the privilege allowed to a clerk in holy orders, when prosecuted in the temporal courts, of being discharged from such court and turned over to the ecclesiastical courts—in other words, to get clear almost altogether. This privilege was gradually extended to all who could read, and many a notorious rascal escaped well-merited punishment by reading his "neck verse," possibly by a recently learned accomplishment. Ultimately, in 1706, by 6 Anne, Ch. 9, the privilege was extended to all, whether they could read or not.

This privilege did not extend to all felonies, but only to capital felonies, and even of these some were "without benefit of clergy"; moreover, by an early Statute, (1488) 4 Henry VII, Ch. 13, laymen allowed their clergy were burned in the hand, and could not claim it the second time, and the practice grew up of imprisoning for life clergymen where the offense was heinous and notorious.

"Benefit of Clergy" was abolished in England by sec. 6 of the Criminal Law Act of 1827, and in Upper Canada in 1833 by 3 William IV, Ch. 3, sec

The ordinance recites that "the detention of prisoners until the sitting of the Court of King's Bench or the sitting of the Commissioners of Oyer and Terminer and General Gaol Delivery had been very burthensome to the public and is likely to be increased by the insufficiency of the Gaols in the Old Districts, and the total want of them in the New Districts, and it often happens that persons committed for simple larcenies¹⁹ are either acquitted or only found guilty of petty larceny." It was indeed notorious that the mercy of juries would often make them strain a point and bring in the article stolen to be under the value of twelve pence when it was really of much greater value; but, as Blackstone says,²⁰ this "was a kind of pious perjury."

The ordinance of April 30, 1789, made simple larceny of not more than 20 shillings sterling only petty larceny, thereby enormously reducing the number of capital offenses, for 20 shillings, about \$5.00, was a large sum in those days. Then, to relieve the gaols, whenever anyone was committed to gaol for a breach of the peace or a simple larceny, he must find bail within forty-eight hours to appear for trial at the Quarter Sessions, or three justices of the peace could call the prisoner before them and try him without a jury. In case of conviction they could sentence him to such corporal punishment (not extending to life or limb) as they thought fit. If the offender had not been a stated resident of the province for twelve months preceding his commitment and was found in the district twenty days after his punishment and discharge, he could be further punished unless he gave sureties for good behavior for seven years. Outside of this modification, the whole brutal English common law was in force. Brutal as it was, it must, however, be acknowledged that it was not so cruel as the displaced French law, which allowed torture, breaking on the wheel and arbitrary imprisonment.

25. This Act provided that all crimes made by the Act itself punishable with death—murder and accessory before the fact to murder, rape, carnal knowledge of a girl under ten, sodomy, robbery of the mail, burglary, arson, riot after the reading of the Riot Act, destruction of His Majesty's dockyards, etc. (a sufficiently long list indeed)—should be so punished, but that all other felonies should be punishable by banishment or imprisonment for any term not exceeding 14 years. Thus the thief escaped the punishment of death, to the great grief of many very good and very intelligent people, who thought that a death sentence for the offender was the only safeguard for society.

¹⁹"Simple larceny" is the felonious taking and carrying away of the personal goods of another, "plain theft unaccompanied by any other atrocious circumstances," and may be grand or petty larceny. While "mixed or compound larceny includes in it the aggravation of a taking from one's house or person." Blackstone's Commentaries, Bk. IV, pp. 229, 230.

²⁰Blackstone's Commentaries, Bk. IV, pp. 229, 230.

The Courts of Oyer and Terminer and General Gaol Delivery were conducted in much the same way as those in England. It may be of interest to set out the proceedings in one of the records which are still extant.

At L'Assomption (the present Sandwich in Ontario) in September, 1792, the court opened, presided over by William Dummer Powell, then first judge of the Court of Common Pleas of the Western District and living in Detroit.²¹

After the formal proceedings, the coroner filed an inquisition held on the body of Alexander Clark; verdict, natural death. On the body of Wawanipi, an Indian man at Michillimackinac; verdict, murder by persons unknown. On the body of Frances Lalonde, taken at Saguinaw; verdict, death caused by Louis Roy. On the body of Pierre Grocher, taken at Detroit; verdict, willful murder by an Indian man named Guillet.

At the common law an accused can be tried on a coroner's inquisition,²² but it was always allowable to have an indictment found by the grand jury and proceed on that. The court directed an indictment to be presented in the cases of Lalonde and Grocher; in Grocher's case a true bill was found and a warrant was issued for the Indian Guillet,²³ but he was not arrested when the court rose.

A true bill was also found against Louis Roy, who was tried by a jury half French and half English. It turned out that the deceased, the prisoner and one Antoine Prevost had been "diverting themselves by throwing sticks, stones and mud at each other" at "Saguinau," and the prisoner had hit Lalonde with a stone and killed him; the jury found excusable homicide by misfortune. Nowadays the prisoner would at once receive his discharge, but not so at the end of the eighteenth century. The homicide was excusable and therefore not felonious, but it implied some fault; the delinquent had consequently to sue out a pardon. This he received as of course and right, but he had to pay the fees for suing it out. If the judge was lenient he

²¹ He was born in Boston, Mass., educated there, in England and on the Continent, practised law at Montreal, became First Judge in 1789, and afterwards (1794) Justice and (1816) Chief Justice in Upper Canada. An admirable lawyer and a man of much force of character, he played no inconsiderable part in the public and private life of Upper Canada for many years. He died in 1834.

²² Blackstone's Commentaries, Bk. IV, p. 299. This practice was abolished in Canada by the Criminal Code of 1892.

²³ A Canadian called Guillet is spoken of by Vaudreuil in 1717 as having influence over the Indians (Mich. Pioneer & Hist. Coll., Vol. 33, p. 591), and a family of that name lived at Detroit.

might allow the jury or even direct them to acquit.²⁴ In the present case the unfortunate Louis Roy was remanded to the custody of the sheriff until he should receive a pardon.

Josiah Cutan was not so fortunate. He, a negro laborer, living in Detroit, was indicted for burglary; he had broken into the store of Joseph Campau "on the north side of the River Detroit, about half a league above the Fort in a house the property of M. Jacques Campau, leased by Mr. Joseph Campau," and stolen some smoked skins, a bundle of peltry and two kegs of rum. He admitted taking the goods when asked by the owner. As some one generally slept in the store, it was considered a "mansion house," and the negro was promptly convicted and sentenced to death.²⁵

The grand jury complained that a true bill had been found at the previous sittings against Chabouguoy and Cawquochish, two Indians, for the murder of David Lynd, alias Jacquo, of the River La Tranche (now the Thames in Ontario). They were still at large and a warrant was issued for their arrest.

The murder of Albert Graverot of Michillimackinac, trader, was also inquired into,²⁶ but no bill seems to have been found.

The grand jury sat at the house of "Madame Marantate,"²⁷ the petit jury and the court at the Court House in L'Assomption.

²⁴ The absurdity of compelling the unfortunate man to sue out a pardon was introduced in 1278 by the Statute of Gloucester, 6 Edw. 1, c. 7, "the King shall take him to his Grace if it please him" (*face le Rei sa grace si lui plect*, as the delightful Norman French has it). This was abolished in England in 1825 by the Statute, 9 Geo. IV, c. 31, s. 10 (Imp.); in Canada in 1841 by 4, 5, Vic., c. 27, s. 8 (Can.).

²⁵ The death penalty was prescribed for all kinds of burglary in Canada until 1841, although for many years before 1841 there was almost (if not quite) always a commutation. The Act (1841) 4, 5, Vic., c. 25, s. 14 (Can.), restricted the death penalty to breaking and entering a dwelling house and assaulting some person therein, while the ordinary burglary was punishable with imprisonment for life, s. 15. The death penalty was removed altogether in 1869 by 32, 33 Vic., c. 21, s. 51 (Can.).

The address to the convicted person by the Judge William Drummer Powell may be quoted. After speaking of the crime, the Judge says: "This crime is so much more atrocious and alarming to society as it is committed by night when the world is at repose and that it cannot be guarded against without the same precautions which are used against the wild beasts of the forest, who like you go prowling about by night for their prey. A member so hurtful to the peace of Society, no good laws will permit to continue in it, and the Court in obedience to the law has imposed on it the painful duty of pronouncing its sentence, which is that you be taken from hence," etc., etc.

²⁶ Graverat & Viger were a well-known trading firm in Detroit, trading to Michillimackinac; possibly the murdered man was connected with them. The name is spelled "Graverod," "Graverad," "Graverat," and "Graverot."

²⁷ Marantate, Marantete, Marantette, was a well-known name in Detroit and L'Assomption. "Francois Marantete, a Frenchman," is spoken of by Lieut.-Governor Henry Hamilton in his report to Governor-in-Chief Haldimand, September, 1778 (Mich. Pion. Coll., Vol. 9, p. 479). This Francois Marantete

THE QUARTER SESSIONS

As has been said, the Quarter Sessions met four times a year and tried non-capital cases with a jury. The justices had also certain duties to perform themselves, e. g., laying out roads and building, preventing cattle, horses, hogs, etc., running at large, appointing constables and many other duties of the same and different nature.

But the interesting features are found on the judicial side.

When serious charges were made against any one at the Sessions, he was remanded to be tried at the sittings of Oyer and Terminer and General Gaol Delivery, e. g., murder, grand larceny,²⁸ sodomy,²⁹ rape.³⁰

By far the greatest number of cases tried at the old Quarter Sessions were cases of assault (whisky was cheap and plentiful); generally a small fine was imposed.

In some cases of petty larceny the prisoner on conviction was tied to a post and received 39 or a smaller number of lashes³¹ on the bare back. One unfortunate woman convicted with her husband, escaped the lash, the court considering her delicate situation and

was probably a merchant from Montreal, the father of Dominique Marantete. Dominique married Archange Marié Louise Navarre, the daughter of Col. Robert Navarre of the French army. They had a large family, of whom there are still a number of descendants in Michigan and Ontario. The house of "Madam Marantate" (the above named wife of Dominique Marantete) was on the banks of the Detroit River, about a quarter of a mile above the old French Church, near Sandwich, Ontario (Mich. Pion. Coll., Vol. 6, p. 497).

²⁸ I intend to quote from the records for the District of Lunenburg only and from 1789 to 1794.

In Canada at this time larceny of more than 20 shillings sterling was Grand Larceny and punishable with death. In 1833, by the Act 3, Wm. IV, c. 3 (U. C.), the penalty of death was removed and banishment or transportation for not less than seven years or imprisonment for not more than 14 years was substituted in Grand Larceny. Petit Larceny was not affected.

In 1837 by the Statute 7 Wm. IV, c. 4 (U. C.) the distinction between Grand and Petty Larceny was abolished and the Quarter Sessions given power to try all simple Larceny, Grand as well as Petty—banishment which has been substituted for the English transportation in 1800 by 40 Geo. III, c. 1 (U. C.) could be awarded by the Quarter Sessions for seven years or imprisonment for two years. The Quarter Sessions were allowed by Sec. 5 of the Act of 1837 to leave difficult or important cases for the Courts of Oyer and Terminer and General Gaol Delivery. These Courts could banish or imprison as before—transportation might be substituted for banishment (1837) 7 Wm. IV, c. 7 (U. C.). In 1841, by the Act 4, 5, Vic., c. 25 (U. C.) imprisonment alone was the punishment, banishment and transportation being abolished. And so it stands today. The English Acts 7, 8 Geo. IV, c. 29; 7 Wm. IV, c. 90, may be compared.

²⁹ Punishable with death till 1870, 32, 33 Vic. c. 20 (Dom.).

³⁰ Punishable with death until 1873, 36 Vic. c. 50 (Dom.) which allowed the court to substitute imprisonment for not less than 7 years: the English Statutes are 9 Geo. IV, c. 31 and 4, 5 Vic. c. 31.

³¹ The lash for petty larceny did not absolutely disappear from the law of Upper Canada until 1837.

thinking she might have been influenced by her husband. Whipping was also inflicted in cases of assault where a fine was not thought sufficient punishment; there was no *gaol convenient*.

Sometimes the petty larcenor was sentenced to the pillory—the stocks were the fate of those who threatened or abused a magistrate.⁸² “Contemptible” or “contemptuous” words concerning a magistrate were punished by a fine or imprisonment.

Through all the latter part of the eighteenth and the early part of the nineteenth century there was an influx from the Colonies to the South, which had become the United States. Not all these immigrants were United Empire Loyalists, and not all were even loyal to the Crown. During all the years now under discussion there was considerable seditious talk, much of it only talk and whisky talk at that, but a source of annoyance to the loyalist settlers who had seen what the like sentiments had brought about in their old home to the south. Prompt measures were taken with offenders in that regard; for example, at the first sitting of the “Court of General Quarter Sessions of the Peace” in and for the District of Lunenburg, which sat at Osnabruck, June 15, 1789, the third case tried was that of John Clark, who was found guilty of seditious behavior, the court finding that he was “not a Subject of this Province as not having taken the oath of allegiance to His Majesty,” ordered him to depart from the province and to remain in custody till he could be conveyed from the province.

In the following June, June 9, 1790, Powell Frederick Landerman was convicted of “Seditious Expressions and Riotous Behaviour”—righteously, we must conclude, for he came naked into a room at Phillip Crysler’s house and said “he was rebel and would stand by that.” As he could “offer nothing in support of his character to recommend him as a settler” in that district, and “his conduct was disloyal and improper he was ordered to be Immediately sent out of this District by conveying him from one Captain of Militia to another till he be out of the said District.” He was accordingly sent where being a rebel was a recommendation, although his Adamic conception of decorous attire would probably not be approved.

The magistrates seem to have been more determined to stamp out sedition than even the juries, or some of them. At the October court, 1793, Leonard Hilmer was indicted “for speaking seditious

⁸²The pillory was abolished in 1841 by 4, 5, Vic. c. 24, s. 31 (Can.)—the stocks disappeared at the same time. Neither had been in use for several years before. In England the use of the pillory was in 1816 limited by 56 Geo. III, c. 138 and abolished by 7 Wm. IV, c. 23 (1837).

words against the King and Country." The jury returned with a verdict of "not guilty," but the court ordered them "to reconsider of their verdict." They reconsidered and brought in the same verdict, whereupon the court required Hilmer "to take the Oaths required by law and give sufficient security for his Peaceable and good behaviour for a year and a day or else leave the Country Immediately."

That such precautions were necessary was abundantly proved by the event. The opportunity of obtaining free grants of valuable land to the north of the international boundary induced many Americans to cross over and settle. In many instances these were loyalists, or at least had not been rebels, but in many the republican and anti-British sentiment was strong, and it persisted. Generally this sentiment was quiescent, but *in vino veritas*, and not uncommonly in moments of weakness the truth came out. Perhaps the most dangerous were not detected. However that may be, many parts of Upper Canada were honeycombed with treason; and when the trying time came in 1812, many who should have defended their country were recreant and either joined the American troops or neglected their duty to serve. The German-American had his prototype in the American-Canadian. It is a matter of gratification that these were in the main thoroughly loyal, as it is to be hoped are those.

Perhaps another function of the Quarter Sessions may be mentioned, i. e., the public reading of proclamations and statutes of general importance. For example, we find the Marriage Act read. "And thereby hangs a tale."

By the French Canadian law, which was in force 1774-1792, by virtue of the Quebec Act (1774), 14 Geo. III, c. 85 (Imp.), till abolished by the statute of (1792) 32 Geo. III, c. 1 (U. C.), a marriage to be valid required the presence of a priest, by the English law the presence of a priest of the Church of England was required. But these in a new country were scarce and hard to find, and young couples were married by commanders of military posts, and even by surgeons and others acting as chaplains. The danger of such irregular unions was apparent to the Legislature of Upper Canada, and in 1793 the Act 33 Geo. III, c. 5 (U. C.), validated such marriages and provided for marriages being solemnized by the magistrates until there should be "five parsons or ministers of the Church of England" in a District. The Act by Section 7 provided that it should be read in all the Districts of the province at the opening of the first General Quarter Sessions of the Peace and then once a year for two years.

The celebrated proclamation against vice was also read—no doubt with the usual result or want of result.

THE FAMILY COURT

JANE DEETER RIPPIN¹

ONE FAMILY IN SIX COURTS

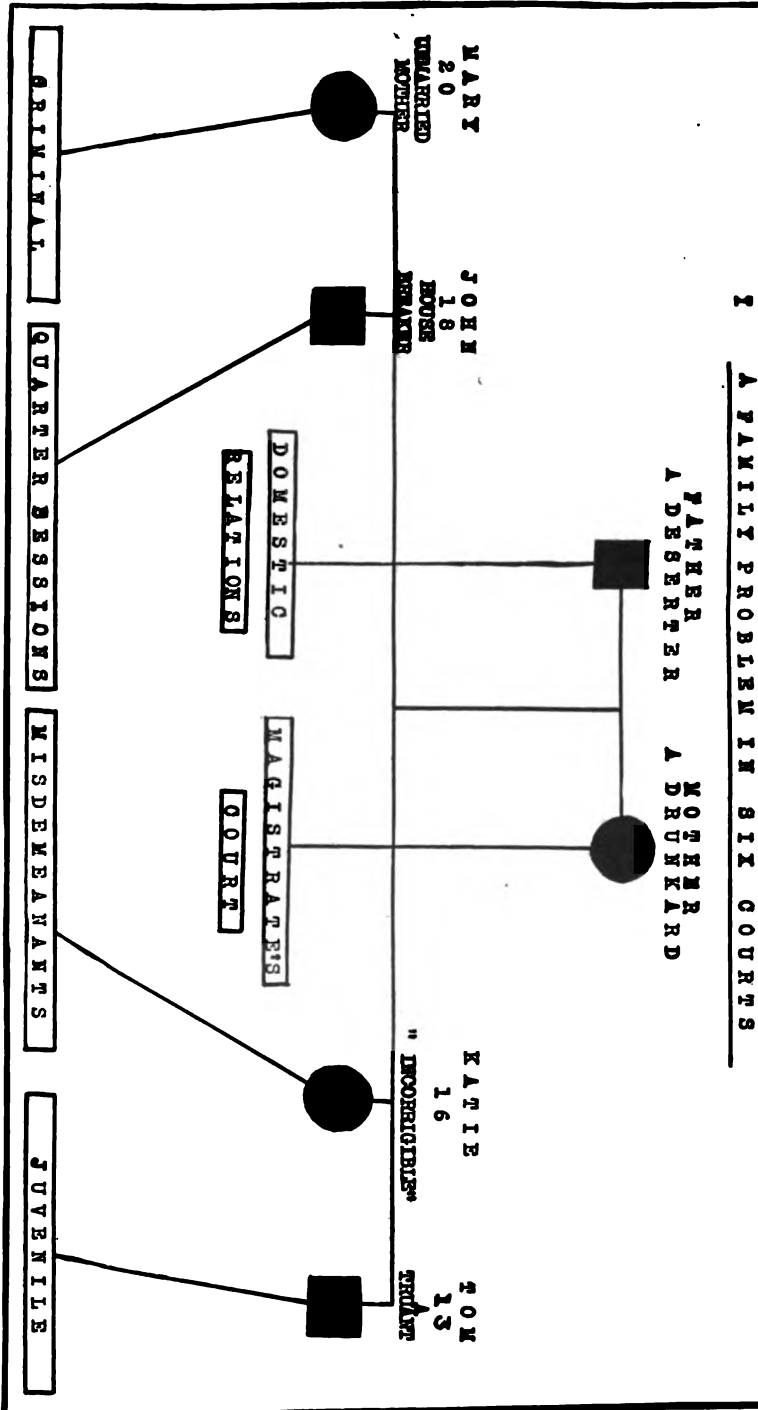
The problem of deserting fathers, drunken mothers, unruly children and young people who through sheer lack of the requisites for happy and normal young life drift into petty crime, is in the last analysis the problem of the family and its relation to the larger community life.

No delinquent family can be chopped up and treated successfully from the standpoint of such individual members as are brought before our courts. The way in which this piece-meal method works can be seen from the accompanying chart, which shows the make-up of an actual court family dealt with in 1916. Chart I shows how these separate tribunals "sat" in this one family as it was represented by its six members. Given the parents' history, the children's conduct seems almost inevitable. John, a house-breaker at 18 years of age, and the only felon of the family, had been in the Juvenile Court before he progressed to the higher Court of Quarter Sessions. If, in place of the separate treatment in his case, the whole family situation had been subject to court review, as shown in Chart II, the home conditions resulting in the father's desertion and the mother's drunkenness might have been discovered and altered in time to prevent the landslide in 1916. In any case, knowledge of the family as a whole should have altered the treatment of its individual members.

EXTENT OF PRESENT DUPLICATION

While the family shown in the charts is a remarkably complete example of the duplication of effort under our present court system, it is by no means unique. In six months' time no fewer than 705 cases were opened in either the Domestic Relations or the Juvenile Divisions of the Philadelphia Municipal Court which were already known to the other. The establishment of a joint index of records in the various courts would be needed to show the exact extent of this problem.

¹ Chief Probation Officer, Municipal Court of Philadelphia.



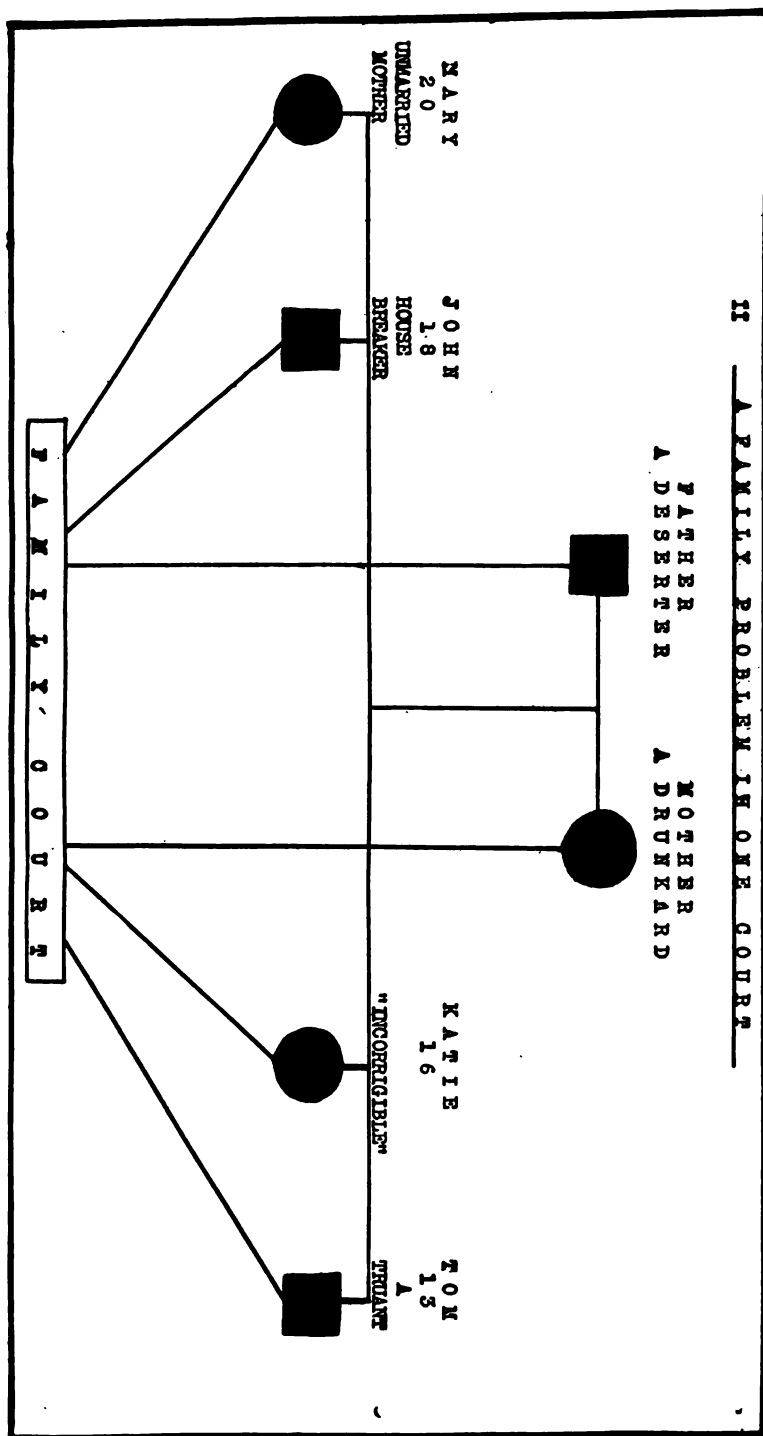
MEANING OF THE FAMILY COURT

While a central tribunal is desirable where all family problems may be considered in the light of the changing concepts of the community's responsibility for its individual units, this does not mean that all cases should be heard in one court, or even by one judge. The valuable principles of classification and specialization on particular problems must not be hazarded in this way. The cases should, however, be scrutinized at their outset, and the divisions of the court to which each is to go be determined not by the technical breach of law involved, but by what appears to be the underlying condition of family life which brought about the maladjustment. Thus the child who constantly begs in the street or steals with design is usually one member of the family of beggars and thieves, and is expressing his relationship to the family by his action. These cases are usually detected by the experienced workers, and should be brought into court, not as delinquent children, but rather as delinquent families, or particularly as delinquent parents. The boy who, when he is in with the gang, steals with the gang, or to carry out some personal plan, is another sort entirely, and needs haling before the "Boys' Judge" who knows how to administer a heavy hand in the way understandable to the boy. Similar distinctions should be made in the cases of older boys and girls who may have been classed as "incurable," but for whose incurability sometimes the family is entirely responsible, and sometimes their own individual make-up.

SPECIAL PROSECUTION FOR THE CRIMINALLY NEGLIGENT PARENT

One kind of case that demands radically different treatment from the majority is that in which parents are charged with criminal negligence of their children. These are not the cases in which overworked and underpaid laborers neglect their children through poverty, but in which they abuse and ill-treat them with actual physical violence, locking and chaining them up and beating them or sometimes passively neglecting them until the children, starved and half-clothed, attract the attention of the police of the district. As a rule, though by no means always, these parents are heavy drinkers.

Whatever the conditions underlying their conduct, it is highly improbable that this will change without unusual pressure being applied. Before parents of this kind come into court they generally have had a long notorious history in their neighborhood, when neighbors, the police, and private social agencies have united in their efforts to relieve the unfortunate children. Parents who have thus shown



themselves indifferent to public opinion are not moved by the kindly court hearing in which they are given "another chance." The one thing that seems to affect them is the removal of their children. It would seem to be the part of wisdom to act positively and remove the children immediately, and make the condition of their return that the parents show themselves changed and fit guardians capable of providing adequately for their family. When the children in such cases are returned immediately after a court hearing, with the warning that they may be removed later, the parents feel that their ways have been vindicated, and the occasional visits of a probation officer cannot possibly counteract this conviction. Another ill effect of the negative procedure is that the neighbors who have resorted to the court as the last appeal lose respect for the law that returns children to the same hopeless situation. The more summary form of treatment on the other hand has had a distinctly good psychological effect on the neighbors who may even help the parents restore themselves in the court's confidence, instead of having the old antagonism heightened to a dangerous pitch.

Cases of such extremely delinquent parents are not frequent. For them to receive the kind of attention and treatment they require, they should be heard in separate session as occasion demands. The hearings might then take on somewhat the character of a criminal proceeding and time be given for a thoughtful consideration of carefully prepared evidence. Thus only can a decent chance be given the unfortunate children who are of all creatures the most helpless. For it is impossible to measure the evil that comes to children, physically, mentally and spiritually, from constant subjection to cruel, ignorant and incompetent parents.

The establishment of the Family Court will mean not something new, but rather a more perfect organization along present lines of the different court divisions. It will mean, first, a probation department whose members will consider themselves primarily as belonging to the court as a whole, and only secondarily as juvenile, misdemeanants' or domestic relations officers. It will mean the central filing of records, so that when one member of the family is known in one division, and his brother, sister or child comes into another, the family history gathered in the first case will be available in the second, or the two cases may be merged.

The actual sub-division of the court, as regards hearings and the assignment of judges, will be of necessity by the product of experimentation. The following is offered as a tentative plan of organization of such a Family Court, as related to a Municipal Court.

GENERAL MUNICIPAL COURT

Main Divisions	Family Court					Criminal Division	Civil Division
Sub-Divisions Handling Predominant Social Questions	Juvenile	Mis-demeanant	Domestic Relations	Delinquent Families	Offenses Against Children		"Poor Man's Court"
Classes of cases heard	Delinquent children up to 16 years	Delinquent adolescents, 16 to 21 years	All desertion and non-support cases	Begging and thieving children	Magistrates' hearings for adult offenders against children	Final hearings in contested paternity cases	Arrearages in wages
			Non-contested paternity cases	Certain incorrigible children and adolescents		Criminal negligence of children	Back claims for rent and board bills
Problems involved	Requiring special discipline and individual treatment		Economic issues	Problems of family treatment	Crimes against state through its children	Criminal offenses against children and criminal negligence of parents	Family and personal issues between employer and laborers
Work of probation staff	Preliminary interviews, investigation, preparation of cases for court hearings in the various sections, follow-up work, securing of medical care, employment and other restorative efforts.						

CRIMINAL LAW REFORM

(Report of the Committee of the American Prison Association¹)

EDWARD D. DUFFIELD, Chairman

Owing to the fact that the membership of this Committee has been widely distributed from a geographical standpoint, it has been impossible for the Committee to hold a meeting and its conferences have necessarily been conducted through correspondence. Under these circumstances the Chairman has endeavored to formulate the views of the Committee as expressed in correspondence, but must assume full responsibility for the formulation of the report and the method of presentation.

The determination of what reforms are needed in the criminal law would seem to require as a preliminary an examination of the object and purpose of the criminal law in order to ascertain how nearly that object is now attained. The main, if, indeed, not the sole object of criminal law is the protection of society, or, as Blackstone² puts it, "the end or final cause of human punishment is not by way of atonement of expiation for the crime committed; for that must be left to the just determination of the Supreme Being; but as a precaution against future offenses of the same kind. This is effected three ways: Either by the amendment of the offender himself; . . . or, by deterring others by the dread of his example from offending in the like way; . . . or, by depriving the party injuring of the power to do future mischief."

We are very likely to swing from one extreme to another in the position we take on any question. The solution of the problem is usually found somewhere between the two extremes. For years we have sought to attain the end of human punishment by adopting the last two methods suggested, and have given little consideration to the amendment of the offender himself. Suddenly we have come to a realization of the futility of success in eliminating the reformation of the criminal as a means of attaining the end which we seek. Formerly the sole consideration was given to the punishment inflicted. Now we seem to consider the criminal and to disregard the crime. Somewhere between these two extremes must be found the proper

¹Presented at the annual meeting of the American Prison Association, New Orleans, November, 1917.

²Commentaries, Vol. IV, Chap. 1, Sec. 2.

method to adopt in order to protect society. The criminal, on the one hand, must be reformed; and, on the other, those who are not yet criminals must be deterred from becoming criminals. Because we have reached the conclusion that inhuman treatment is not an essential part of punishment we need not blind ourselves that punishment properly administered will play a part in the rehabilitation of the criminal and will also act as a deterrent.

We must not forget that society as well as the criminal has rights which must not be infringed upon, and in all consideration of changes and alterations, which admittedly are needed to adjust the criminal law of today to a more ideal condition, we must not too lightly dismiss the idea of punishment and overemphasize the idea of consideration for the criminal. Somewhere there must be found a middle ground in which society actuated by humane motives and safeguarding the criminal against cruelty and abuse will furnish protection for itself by adequate penalty.

Referring again to Blackstone, he, although living at a time when capital punishment was meted out to those guilty of the most trivial offenses, seems to have had a clear vision of the road to be followed in order to attain the end sought. He says: "Though the end of punishment is to deter men from offending, it can never follow from thence, that it is lawful to deter them at any rate and by any means; since there may be unlawful methods of enforcing obedience even to the justest laws." "Punishment," he says, "ought always to be proportioned to the particular purpose it is meant to serve, and by no means to exceed it." He concludes the first chapter of the fourth book of his commentaries, that devoted to crimes, with the following observation, which seems to us most apt:

"We may observe that punishments of unreasonable severity, especially when indiscriminately inflicted, have less effect in preventing crimes, and amending the manners of a people, than such as are more merciful in general, yet properly intermixed with due distinctions of severity. It is the sentiment of an ingenious writer, who seems to have well studied the springs of human action, that crimes are more effectively prevented by the certainty, than by the severity, of punishment. . . . It is a kind of quackery in government, and argues a want of solid skill, to apply to same universal remedy, the *ultimum supplicium*, to every case of difficulty. It is, it must be owned, much easier to extirpate than to amend mankind; yet that magistrate must be esteemed both a weak and a cruel surgeon, who cuts off every limb, which through ignorance or indolence he will not attempt to cure."

We doubt whether there could be enunciated today, and with the enlightenment of the twentieth century, a clearer direction for those

whose duty it is to enact and enforce criminal law. Unfortunately, we have today magistrates who adopt the easier course of extirpating rather than seeking to amend mankind. Lawmakers apparently have not learned that *certainly* rather than *severity* of punishment will prove in the long run the greater deterrent. At a time and in a country in which unpunished crimes are steadily upon the increase, where life is treated as cheaply as it is in the United States of America today, it might be well for lawmakers and magistrates alike to read with care the views of the great exponent of the English Common Law, and apply some of the principles he recognizes.

Within the limit of a report such as this, it is, of course, impossible to discuss in detail the various reforms which might be applicable to the criminal law of the several states. We dismiss them necessarily with the general observations above made. There are some matters, however, which seem to require particular consideration.

INDETERMINATE SENTENCE

It is unnecessary, we are sure, to an Association such as this to discuss the merits of the Indeterminate Sentence. By common consent those interested in prison reform have reached the conclusion that it furnishes the best method of fixing the extent of punishment it is necessary for society to inflict in order to produce the result sought. It is now the law of many states. It should be the purpose of this Association to see that it is universally adopted. At the present time the constitutionality of some of these laws are under attack. In order that this law may have effect it may, therefore, be necessary to procure in some states constitutional amendments. We would suggest that the Association either through its Secretary, or through the next Committee on Criminal Law Reform secure a compilation of the various statutes, indicating those which have stood the test of constitutionality, and those which have failed, in order that a model may be perfected, and that efforts may be made where it conflicts with constitutional mandate to procure an amendment to the constitution permitting its enactment.

Before dismissing this subject there is one point which we feel should be emphasized. The success or failure of the indeterminate sentence depends almost entirely upon its administration. The determination as to whether reformation of the criminal has been secured is, of course, a question of the greatest difficulty. It cannot be done by any set rule or method. No machinery yet devised by man can mechanically reach a satisfactory conclusion upon this point. As long

as human nature remains as it is, individual consideration must be given to individual cases. The fear we have is that where a prisoner has been committed to an institution for a comparatively trivial offense, and either through inadvertence or because he does not fit into the method adopted by the parole board, his incarceration has been prolonged to a period that to the average man would seem grossly excessive, or, where for a serious offense it is assumed that reformation has occurred in a miraculously short time, criticism may become so severe as to condemn the whole system.

We earnestly urge upon those who are in charge of the administration of this law that they will give of the time and thought necessary to the solution of each individual case, and will not adopt the easier system of attempting to provide for some mechanical test, or seek for self-operating machinery.

FEE SYSTEM

The fee system is in its nature vicious, and particularly so in the administration of criminal law. Many states have abolished it in its entirety, but, unfortunately, other states have retained it. We can imagine no defense which can be urged for its continuance. It cannot maintain the claim of economy, nor does it find a justification from any economic or scientific standpoint. Surely it needs no argument to demonstrate that the income of one engaged in the administration of that branch of the law which determines the freedom or imprisonment of his fellow-man should not have his income dependent in any way upon the number of cases which he handles.

We strenuously urge that an effort be made by this Association to secure the abolishment of the fee system wherever it exists.

STATE USE

The state use system in the employment of labor is one that is coming into operation gradually, and it seems to be the best thing we know so far. Why these prisoners should not also be employed in the production of articles for use by the federal government, it is difficult to understand. This would be very valuable in this period of stress. The only thing that stands in the way, as we understand it, at this time, is an executive order issued by President Roosevelt. It would seem desirable to ascertain whether upon a proper presentation this order could not be revoked, and some arrangement made for the utilization of prison labor along the line indicated.

SPEEDY TRIAL

The constitution of the United States provides that every citizen "shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed."

The constitutional right to a speedy trial is, however, at present frequently more honored in the breach than in the observance. An inspection of many of our county jails would find prisoners accused, but untried, who are unable to give bail, held for long periods of time for comparatively trifling offenses. While it is difficult to suggest a remedy for this condition, it certainly calls for action. Public sentiment must be appealed to. If more courts are necessary to dispose of criminal cases, such courts should be created. If the delay is caused by neglect or carelessness of public officials, public sentiment must compel them to a sense of their duty. It is not a condition which can be justified on the plea of economy. The state cannot, upon a plea of poverty, infringe the constitutional right of a single individual, no matter how humble he may be. The very basis of constitutional government is that every individual may assert his constitutional rights and have them respected, even if opposed by the interest of others.

This is a plea for simple justice. Some method must be devised in each and every state to secure to the accused a speedy trial, which, as a citizen of the United States, its constitution gives him.

Other matters suggest themselves as worthy of consideration, but which may possibly best be postponed for further consideration. Such matters as the sentence and commitment of persons pleading guilty without an indictment, the change of procedure to permit the accused under suitable safeguards to be interrogated as to his alleged participation in the criminal act, or the permission of prisoners to enlist for service in the war under proper safeguards, and various matters of criminal procedure are among the topics which might be discussed.

We feel, however, that these may safely be left to the general consideration of the Association or referred to the next Committee when appointed.

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A DEPARTMENT OF DIAGNOSIS AND TREATMENT FOR A MUNICIPAL COURT

LOUISE STEVENS BRYANT¹

SOCIAL PROBLEMS INVOLVED IN LEGAL SITUATIONS

For several years Municipal Courts have been developing their own technique for handling social problems which present a wide variation from the usual legal situations which courts are called upon to adjust. It has become increasingly apparent that the problems are not to be solved without the continuous application of the scientific principles developed in Medicine, Psychology and Sociology. While the main issue arising in Courts of Domestic Relations is an economic one, the conditioning factors are physical, mental and social.

The study of apparent causal factors of domestic difficulties in nearly six thousand cases, which is presented in graphic form in the section of the 1916 report on the Domestic Relations Division of the Philadelphia Municipal Court, shows that the issues are overwhelmingly dependent upon medical and psychological interpretations.

THE FUNCTIONS OF MEDICINE AND PSYCHOLOGY IN SOLVING SOCIAL PROBLEMS

This situation has been recognized more or less from the start and has been met in Philadelphia by the increasing use of the resources of the city for providing for medical and psychological care, and by the provision by the court of its own examining physicians and psychologists for the various divisions. Much of the actual examination and treatment, however, has had to depend on the courtesy and voluntary service of many individuals and organizations. So long as the work of securing medical, physical and social care for individuals coming into court was regarded as something in addition to the court's primary objects, dependence on voluntary aid sufficed. Even while this work was supposed to be needed only in exceptional cases, there was no need for a more complete equipment. In the Juvenile Division the need for routine medical examination and treatment of all cases has long been provided for. In the Misdemeanants' Division, the physical and medical side of the treatment has predominated, so that physicians and

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psychologists were prominent features of its organization from the start. In the divisions of the court dealing with adults all this has not been so evident, but experience with many thousands of cases has made it clear that no case can be completely understood or satisfactorily provided for until its medical, physical and social implications become articulate.

The nature of the psychological and medical problem arising in the Municipal Court can best be illustrated by two families dealt with by the Philadelphia Municipal Court. They were of widely different characters, but alike in the fact that the trouble was predominately a medical one although this fact appeared only after many months of acquaintance.

THE SILENT MAN

The Silent Man was forty-eight; his wife forty-two. They had two children; a girl of fourteen and a boy of thirteen.

The case was brought to the attention of the court by the hysterical wife of the Silent Man, who insisted that she could no longer endure the treatment of her husband. During the past five years the husband had turned silent, about every six months. He refused to speak to her, occasionally addressing a remark to her through the children. Periods of silence on the part of the man lasted from two to six weeks, at the end of which time he frequently would break up the furniture, usually in the dining room. He would then have a week of remorsefulness toward the whole situation.

The reaction of the lay worker is that a man of this type is just mean; that otherwise he would not act so.

The man had been employed for sixteen years where he had a wage from \$30 to \$40 a week. The unusual part of the case was that the couple lived contentedly and happily until the silence periods made their appearance.

The wife of the Silent Man was so completely nervous and run down that hospital care was deemed advisable. The boy of thirteen had a very bad case of chorea; the girl of fourteen was stubborn and silent, but affectionate toward her mother.

The Social Service Department of the University Hospital was asked to treat the wife. The physicians in the clinic for nervous diseases recommended that she be released at once from the worry and anxiety of domestic difficulties to avoid a dire result. The probation officer assigned to the case finally was able to arrange that the wife go to a convalescent home for two weeks. The Silent Man

refused to speak to the worker, but at last a message was sent by way of the little girl.

The worker's next contact was to take the boy of thirteen to the Children's Hospital. The father was rather loth to permit the boy to go. Finally he agreed. The doctor in the Children's Hospital stated that the boy had a nervous condition and asked if there were other children. The worker then brought the girl of fourteen, who apparently was well but sullen. After a very thorough physical examination, it was learned that the girl had incipient tuberculosis and was slightly deaf. Treatment for both boy and girl was secured.

It took many weeks to make a contact with the Silent Man, but finally he was amenable to examination by a neurologist. It was found that there was a bodily cause for his "brain storms," and that it responded to treatment. He admitted after much questioning that he knew when the spells were coming on, and was persuaded to notify the physician so that treatment could be given in time to ward them off.

With the health of the children and wife taken care of, and the critical emotional storms of the man averted, the family life became normal again, as there were no other sources of trouble.

The case of the Silent Man was opened in June, 1914. The mother's problem was fairly well worked out by December, 1914. The father's, many months later. The two children were taken care of by January, 1917, after two and a half years.

THE MAN WHO WOULDN'T WORK

His wife, Martha, was an energetic woman, a woman with special training; a splendid cook, earning never less than \$11 per week. Above all things in life she loathed a lazy individual. Her husband, Peter, was the man who wouldn't work.

She came to the court asking to be relieved of him. He was a costly luxury. This man was a big, husky, gentle soul, about forty, with a weak, wide smile. Four or five years ago, before the establishment of the Municipal Court, his wife had a similar feeling that she could not afford to have him about. He was taken into the old court, where an order of \$8 per week was made on him. He insisted that he never earned more than \$6 per week. He was the type of man that dogs and children love.

The probation officer talked with the man. His only excuse for not holding a steady job was that he wanted to do the thing he felt

like doing, and doing it when he wanted to do it. Therefore, he preferred work like tending furnaces, taking out ashes, whitewashing cellars, etc. Through this he eked out a paltry \$6 a week. The man looked so strong that it did not occur to the worker to ask for a physical examination. The worker instead persuaded the man to try another job under the supervision of the probation department. The man did this, under protest, and within a week his employer protested that he was not worth fifty cents a day. He would not lift. When his employer was questioned further, he insisted that the man was just not interested. The probation officer asked his employer if he complained of ill health. He stated that he did not; he was always cheerful; everybody liked him; that he would be a nice person to have about the shop, if one could afford him for decoration. The man apparently was just as normal as any other workingman.

Before placing him in the second position, the probation officer decided to look up his work records since youth. It was discovered that The Man Who Would Not Work had never earned over sixty cents a day even in his youth. The question of a second position was approached by the probation officer, and it was suggested that because the man would not lift, it would be wise to have a physical examination, even though he was very strong looking. The result of the physical examination was the discovery of a definite organic kidney condition; likewise an organic heart condition. The physician making the examination suggested that the man have a psychological examination. He was sent to one of the hospitals for observation. The diagnosis was given that he would never be able to earn more than his own living. He was far below normal, but was not an institutional case. This was explained to the wife, who insisted that he was more able to work than she, and in order to satisfy her preconceived notion about him, it was necessary for the department to arrange for her physical and mental examination in order that the same doctor who examined her husband might convince her that she was better equipped to earn than the man whom she was accusing of being lazy.

The final outcome was that the wife, Martha, agreed to support herself and the little Lena, if she didn't have to support the father or have him around. A brother was found who agreed to look after Peter and keep him on the job and see that he sent \$1.50 a week home whenever he had it.

Nearly six years elapsed before it was possible to adjust the case from the time it first came into court.

THE CLEWS THAT MEDICINE AND PSYCHOLOGY FOUND AND FOLLOWED UP

Two things stand out very clearly in these histories: First, the court was unable to solve either of the problems without the service of medicine and psychology; second, it took a dangerously long time to discover this. In the case of the Man Who Wouldn't Work, the solution was not even suspected for four years. The man, who was an imbecile, and far from physically fit, was treated as though he were a complete and responsible man. His physical bigness and illusory appearance of health, together with his nearly normal mentality, prevented justice being done to him by his wife, his employer and the courts.

The case of The Silent Man was complicated by the nervous conditions and ill health of his entire family. The fact that his trouble was a mental one was obscured by his entire ability to succeed in business and the absence of personal violence towards his family. His silence appeared to be sulkiness, and his smashing of furniture, bad temper.

DIAGNOSIS AND TREATMENT OUTSIDE THE COURT A TANGLE OF RED TAPE

Another feature about both of these cases was that the court, to follow up the clues which it got from time to time of the real difficulty, had to call upon many other people and agencies in the community. In the case of The Man Who Wouldn't Work, much time was lost in trying to get positions for him. The need for a mental examination was almost an accidental discovery, due to the alertness of the physician who made the first medical examination.

In the case of the Silent Man, it required the services of five clinics in two hospitals, and a neurologist, to get at his and his family's problems.

It sounds like a small matter to carry out the doctor's directions to have a child examined for defects of the ear, eyes, nose and throat, and the general constitution, but this is what is required. If a child must be taken to the hospital or dispensary, first it must be known which hospital is nearest the child's home; this may be quite remote from the court, and time is consumed in getting there, or going to the child's home to get him. The various clinics are usually held simultaneously, so that it is impossible as a rule to secure an examination in more than one clinic, or at the most two in a day. It is fre-

quently necessary to go to two or even more hospitals in order to secure the necessary examinations. When it is considered that two or even three visits are sometimes needed in order to determine the diagnosis in one clinic, the real time-consuming element in this sort of procedure is evident.

DIAGNOSIS AND TREATMENT WITHIN THE COURT A CONSERVATION OF TIME, NERVE FORCE AND MONEY

If in place of having to send people to all parts of the city at all hours of the day for examinations and observation, the court had its own staff of examiners that could decide what treatment was necessary, and in simple or short cases begin treatment immediately, the amount of time saved would be incalculable.

In addition to the time saving, the element of nervous conservation is important. To secure the the consent of the individual for his own examination, or his children's examination, sometimes requires long continued and patient effort. The lay person sees little need for more than one examination, and is apt to think the doctor does not know his business if he cannot decide at once what is the matter with him and where.

Much time is also lost from work for a great many people; car-fare enters in as a real drain when many trips must be taken, and whole families suffer when the mother must be absent at meal times or early in the morning.

PROPOSED ORGANIZATION

These considerations all point to the need of a department within the court which should have its own equipment for making all necessary medical or psychological investigations. In order to co-ordinate the results of the different investigations, it would be necessary to have a social director, who, with a group of specially trained workers, should make the contact between the individual cases and the specialists on the one hand, and with the different courts on the other.

THE SOCIAL DIRECTOR FOR CO-ORDINATION

The social director should be responsible for arranging all appointments for individuals with the different doctors. She should be responsible for preparation of family and case histories for the use of the examining physicians. The carrying-out of recommenda-

tions in regard to treatment, including commitment to hospitals and other institutions, whether given by the court of physicians, would devolve upon the social director.

PAID SPECIALISTS AVAILABLE AT ALL TIMES

The department should have as regular members of its staff, working on full time, at least the following: A general medical practitioner for making general examinations; a neurologist to examine cases of nervous disease; a psychiatrist for mental diseases, and a psychologist for making psychological examinations. To these should be added a dentist, working at least half time. Bad teeth are probably responsible for more physical ills, and are the source of more nervous irritations than any other single defect, but dental work is expensive at best, and it is hard to persuade people to undertake anything at once expensive and painful.

VOLUNTEER BOARD OF SPECIALISTS

It will be impossible to have all the treatment necessary carried out in the department, as the regular staff workers at best can treat only minor or short cases. It is recommended, therefore, that a Board of Specialists be appointed, who should act as consultants in diagnosis and superintend treatment, especially of complicated and long-continued cases. This group should act as Board of Directors for the department.

At least the following fields of medicine should be represented: General Medicine, Ophthalmology, Otology, Laryngology, Phthisiology, Dentistry, Surgery, Neurology, and Psychiatry.

To take the fullest possible use of the services of these specialists, without making an undue demand on their time, it is suggested that several physicians be selected from each field, and that they arrange their time according to a schedule, which would make each one available during definite portions of the year.

THE SUBJECT FOR DIAGNOSIS AND TREATMENT

Children

The matter of deciding who should go to this department of diagnosis and treatment would be determined variously in the different divisions. First, all children should be given a general medical examination, especially for the detection of defective vision, defective

teeth, defective hearing, diseases of the nose, throat and glands, and general constitutional disorders of nutrition, heart and bony structures. While this examination was in progress it could be decided whether a mental examination was necessary. As a general rule, all children who are retarded three years in their school work should be given a mental examination to determine whether their retardation is due to removable causes, or whether it is inherited, and an indication of feeble-mindedness. Children of working age might well be given a mental examination to help determine what they are best fitted to do and what training they need before entering their life work.

Misdemeanants

In the misdemeanants' division, medical examinations would usually be a matter of routine, and a mental examination should be given about as often, and for the same reasons as in the cases of the children. For the adults the need for medical and physical examinations will be determined more or less by individual cases. Certain kinds of mental disorders and physical disabilities are so apparent that with some experience the first interviewer could refer the client to the department. In less apparent cases the need would only become obvious after considerable acquaintances. Many cases would probably reach the point of a court decision before the need of a physician and psychologist would be felt.

Unadjusted Individuals

Types of cases that should be regarded as possible clients of the department are the chronic alcoholics or drug users of either sex; chronic beggars; the chronic deserting fathers; the women who make repeated applications for help to the court, but always withdrawing their applications before court action is reached; the hopelessly incompetent housewives; the man or woman with the unadjustable grievances who seems to enjoy prosecution for its own sake. These cases are representative of that large group who seem to be unadjustable by the lay worker, and who come into court sooner or later. The court must decide if they are permanently unadjustable, or can possibly be helped to fulfill a normal social relationship.

CONFIDENCE OF TECHNICAL POINTS GAINED BY CONCENTRATION OF AUTHORITIES

The court with its own specialists to determine technical points in the treatment of individual cases could make its decisions with

much more confidence and more quickly than when it is necessary to go outside to those with many different standards and concepts of the significance of the mental and physical factors determining conduct.

THE INTERDEPENDENCE OF DIAGNOSIS AND TREATMENT

One of the lessons of dealing with many of these apparently unadjustable causes is that only treatment continuously carried out over long periods of time can help to relieve them. Sporadic work, occasional visits at a time of crisis are almost useless. It is as important for the court to provide the mechanism for securing treatment as for securing diagnosis. Frequently treatment is the necessary preliminary to diagnosis. In court work more than any other form of social service the famous medical aphorism that *diagnosis must equal prognosis* applies. This is a matter of peculiar necessity, for it seems to be true that when a case has come into court, the court assumes permanent responsibility for its adjustment.

To summarize: The court needs a department of diagnosis and treatment to achieve its own ends. It does not need it as a pathological or therapeutical divisions grafted upon its legal body.

REPORT OF THE NEW JERSEY PRISON INQUIRY COMMISSION¹

GEORGE W. KIRCHWEY²

POLICY OF THE STATE WITH REFERENCE TO CRIME

The earlier penal codes of New Jersey reflected the crude and harsh conceptions of the time regarding crime and its punishment. Except during the brief period of Quaker ascendancy in West Jersey (1675-1703) and for a shorter time in East Jersey, when a milder and more enlightened system was put into effect, offenses were many and punishments drastic. Twelve offenses, ranging from murder to witchcraft and conspiracy, were punishable by death. Branding on the hand or forehead was the penalty for burglary or robbery, and corporal punishment, banishment, the stocks and heavy fines were the punishments prescribed for most other offenses. Malefactors being thus summarily dealt with, there was no need of prisons except for debtors and as places of detention for those awaiting trial. It is to the Quaker influence that we owe the relatively humane method of punishment of offenders by imprisonment at hard labor. They took over the workhouse, employed in Europe for the repression of beggars and vagrants, and made it the basis of their penal system, substituting imprisonment for most of the more cruel punishments provided by the Puritan codes of the time.

By 1796, when the first criminal code of the State of New Jersey was enacted, imprisonment at hard labor had become the usual method of punishment, the terms prescribed ranging from 21 years for the crime of sodomy to six months for "personating Jesus Christ," though the death penalty was still exacted for treason, murder and petit treason and for the second offense of manslaughter, sodomy, rape, arson, burglary, robbery and forgery. It was this general substitution of imprisonment for other and more summary methods of punishment that called for the building of a State Prison (1797-1799), one of the first to be erected in the United States. It required another

¹ From the Report of the Prison Inquiry Commission of New Jersey, two volumes, pp. 168 and 654, 1917.

The personnel of the Commission is as follows: Dwight W. Morrow, Chairman; Seymour L. Cromwell, Henry F. Hilfers, John F. Murray and Ogden H. Hammond.

² Dr. Kirchwey, President of the American Institute of Criminal Law and Criminology, former Dean of the School of Law in Columbia University, is Advisory Counsel to the New Jersey Prison Enquiry Commission.

half century to eliminate from the penal code of the State the practice of inflicting the death penalty on offenders guilty of a second offense of crimes ordinarily punishable by imprisonment. By the revised Code of 1846, the death penalty for a second conviction of any of the major crimes, which had been prescribed in the Codes of 1796 and 1829, was commuted to a sentence of imprisonment for not to exceed double the period of imprisonment exacted for the first offense. When, in 1916, the death penalty was left to be applied only to the rare case of high treason and to those exceptional cases of murder in the first degree where the trial jury deemed the alternative penalty of life imprisonment an inadequate punishment for a peculiarly atrocious crime of this sort, the process of substituting imprisonment for the severer penalties of an earlier day was practically complete.

As thus outlined, the penal history of the State has followed the traditional lines. It was only when the notion that criminals were not all equally incorrigible, but that some of them might be converted from the error of their ways, found its way into the criminal law that a new era of penal reform was inaugurated. It is to this new conception, which is still imperfectly apprehended, that we owe such provisions as the statutory distinction between first and second offenders and the more modern provisions of the suspended sentence, the placing of certain first offenders on probation, the indeterminate sentence and the reduction of sentences by good conduct in confinement.

As early as 1833 the Joint Committee of the Legislature on the erection of a new State Prison insisted upon the urgent necessity of providing a better system of prison discipline and expressed the conviction that the real object of punishment was the prevention of crime and that this was to be achieved by deterrence and reformation rather than by cruel punishment. The plan recommended to secure these ends was the adoption of the so-called "Pennsylvania System" of solitary confinement, and the reformatory purpose of the new system, which was put into effect by an act passed February 13, 1833, was clearly set forth in a congratulatory paragraph of Governor Vroom's message of October 29, 1834, as follows:

"The plan of solitary confinement, with labor, adopted by the State, is gaining friends among those who have devoted much attention to the subject. It is peculiarly fitted for that profitable meditation which tends to reform the unfortunate convict, reclaim him from vice and finally restore him to the bosom of society. This is the blessed end we

have principally in view; and if it shall be attained in any good degree, our best hopes will be realized."

As the History appended to this report clearly shows the experiment on which such transcendent hopes were based proved a tragic failure, but the new emphasis on reformation of the criminal as an important object of the punishment imposed on him did not grow less. In 1852 the recently organized New Jersey Prison Reform Association, of which Daniel Haines was president and ex-Governor Vroom vice-president, memorialized the Legislature on the great need for a House of Refuge for juvenile offenders, in order that these might be removed from the unsuitable environment and improper associations of the State Prison and be provided with special opportunities for reformation. At the same time the Board of Prison Inspectors, then, as now, the governing body of the institution, in its reports of 1852 and 1853, urged that minors and first termers should no longer be committed to the State Prison, which had no adequate provision for their reformation and education, but should rather be confined in the county jails and workhouses. These efforts bore no fruit until 1864, when they enlisted the vigorous support of Governor Joel Parker, who secured the passage of the act of April 6, 1865, to "Establish and Organize the State Reform School for Juvenile Offenders," now known as the State Home for Boys at Jamesburg. A similar institution for girls was created under the name of the "State Industrial School for Girls," now known as the State Home for Girls, at Trenton, pursuant to an act of the Legislature, passed April 4, 1871.

It required 24 years more of agitation to bring about the further differentiation in the treatment of offenders which was involved in the establishment of the State Reformatory at Rahway, authorized by the act of March 28, 1895, and not until 1910 was this phase of development completed by the institution of the Reformatory for Women at Clinton Farms.

That the newer conception of the reformatory purpose of punishment, even as regards the average prison population, was making its way in official circles is significantly shown by the enactment by the Legislature of a series of remedial statutes, beginning with the act of April 14, 1868, providing for the commutation of sentence by good behavior and faithful discharge of duty. This act made it possible for the convict to reduce his period of imprisonment by five days in each month. On May 13, 1889, a more sweeping measure of clemency was enacted as a part of the first parole law of the State. This provided that all first termers, except those convicted of one of the

seven major crimes—murder, manslaughter, sodomy, rape, arson, burglary and robbery—should become eligible to parole, on the recommendation of the prison authorities, after serving half the terms for which they had been sentenced. The Attorney-General, however, questioned the constitutionality of this act, and, accordingly, April 16, 1891, another act was passed, vesting in the Court of Pardons—then, as now, composed of the Governor, the Chancellor and the lay judges of the Court of Appeals, and which had theretofore been confined to the exercise of the pardoning power only—the authority to set any qualified convicts at large under such conditions as the court might see fit to impose. This act created a new parol authority in addition to that claimed and exercised since 1898 by the prison authorities.

The parole power was enlarged by an act of April 12, 1912, which provided that any inmate of the prison who had not previously been convicted of felony should become eligible to parole after serving two-thirds of the term for which he had been sentenced. Prisoners held under a life sentence were given the benefit of the act by a clause making 25 years the computed one-half of such a sentence. A later enactment, approved April 15, 1914, extended this clemency to convicts who had served one-third of the fixed sentence imposed, and, in the case of persons confined under a life sentence, after serving 15 years.

The revision of the Penal Code of the State in 1898 provided for the reduction of all crimes, except treason, murder, manslaughter and arson, to the two fundamental categories of misdemeanors and high misdemeanors, and prescribed penalties which, in many cases, were substantially less than those previously exacted. The limit prescribed for a misdemeanor was a fine of \$1,000, or three years' imprisonment, or both; for a high misdemeanor, with a few exceptions, a fine of \$2,000, or seven years' imprisonment, or both.

The opposition excited by the traditional mode of inflicting the death penalty by hanging, led in 1906 to the enactment of a law substituting the method of electrocution, which had previously been adopted in New York and several other States on the presumed ground that it was more humane and less obnoxious to public sentiment. The same bill, enacted April 4, 1906, transferred the authority and duty of inflicting the death penalty from the sheriffs of the several counties to the principal keeper of the State Prison.

Probation and the suspended sentence made their first appearance in New Jersey, April 2, 1906, when three acts were passed

authorizing courts and magistrates before whom any person should be convicted of a criminal offense, instead of imposing the penalty provided by law for such crime, to suspend sentence on the person so convicted and order him to be released on probation for such time and under such conditions as the court or magistrate should determine, and authorizing the judge of the Court of Quarter Sessions in each county to appoint a probation officer to exercise supervision over the convicts in such county who should be so released.

After many years of agitation for the indeterminate sentence, which had long been urged by prison reformers in this and other states as affording a means for detaining convicts in confinement until, and only until, such time as they should have demonstrated their fitness to be returned to society, the Legislature, on April 21, 1911, enacted the form of such law that has generally been adopted in this country, providing for a maximum and minimum term to be imposed on all persons sentenced to confinement in the State Prison. The act provided that the maximum should be the limit of imprisonment provided by the act of 1898, previously referred to, and the minimum not less than a year nor more than one-half of the maximum term, the minimum of a life sentence being fixed at 25 years; and it was further provided that, if deemed worthy to be set at large, prisoners who had served their minimum term should be released on parole by the Board of Inspectors. A subsequent act, approved April 15, 1914, enlarged the range of judicial discretion by fixing the minimum in general at from one year to two-thirds of the maximum term, but, in the case of persons whose sentence of death had been commuted to life imprisonment, reduced the minimum from 25 to 15 years.

While the halting and imperfect application of the indeterminate sentence, which this legislation embodies, has proved disappointing to the ardent advocates of the principle, it is fairly abreast of the legislation of other progressive states as applied to convicts sentenced to an institution which is primarily penal, rather than reformatory, in character. But here, as elsewhere, the principle has been more liberally applied to persons committed to more purely reformatory institutions. The law governing commitments to the State Home for Boys at Jamesburg (March 22, 1900) prescribes no term of imprisonment, providing merely that the trustees of the institution may hold the boy committed until he attains the age of 21, or may, in their discretion, at any time discharge him as reformed or parole him. A similar rule governs commitments to

the State Home for Girls at Trenton (March 23, 1900). Commitments to the State Reformatory at Rahway and to the State Reformatory for Women at Clinton Farms are for an indeterminate period extending to the maximum limit prescribed by law for the crime of which the offender was convicted. The governing boards of both institutions may in their discretion parole an inmate at any time prior to the expiration of such maximum period.

There is no surer index of the progress of a community in civilization than the treatment which it accords to its dependent and delinquent children. In her dealings with the former class New Jersey holds an honorable place, due mainly to the institution and management of her admirable State Board of Children's Guardians, created by act of the Legislature, March 24, 1899. But notwithstanding recent remedial legislation of a praiseworthy character, the delinquent children of the State are still criminals, triable by criminal process, and subject to punishment by imprisonment, with adult criminals, in the ordinary penal institutions. It is true that special institutions have been provided (the State Home for Boys at Jamesburg and the State Home for Girls at Trenton), to which child offenders between the ages of 8 and 16, in the case of boys, or of 9 and 18, in the case of girls, may be committed, but they may, if guilty of crime, in the discretion of the court, be sentenced to imprisonment in a jail, penitentiary or the State Prison; and, if convicted of murder or manslaughter, the punishment of a child over the age of seven takes the same course as that of an adult guilty of a similar offense.

As far back as 1845, a public-spirited woman, Dorothea L. Dix, stirred the public conscience by her appalling disclosures as to the size and the deplorable state of the insane and idiotic population of the State, and secured the passage of the act of 1848, providing for the establishment of the State Hospital for the Insane at Trenton, and for the transfer to that institution of the insane inmates of the State Prison and of the county jails and workhouses. But here the movement halted and many years were to elapse before the next inevitable step was taken. It was not until March 29, 1910, that the act of 1848 was made really effective by a law providing, by a somewhat cumbrous procedure, for the continuous transfer of insane inmates to the State Asylum. Similar provisions have been enacted for the transfer to the asylum of insane inmates of the State Reformatory at Rahway and of the State Reformatory for Women at Clinton Farms. A sweeping measure of April 20, 1914, providing for the transfer of epileptics from various institutions to the State Village for

Epileptics, and of the insane to a county asylum or to either of the State Hospitals for the Insane, was drawn so as to include the inmates of the State Home for Boys and the State Home for Girls, and the latter were also included in a provision for the transfer of feeble-minded inmates to the Home for Feeble-minded Women at Vineland, but none of the provisions of this law were made applicable to the State Prison or to either of the reformatories. Accordingly, as the law now stands, insane inmates of any of the State penal and correctional institutions may, though with considerable difficulty, be transferred to the State Hospital for the Insane or, in some cases, to a county asylum; epileptics in the Jamesburg and Trenton Homes may be transferred to the State Village for Epileptics, and feeble-minded girls in the Trenton Home may be put under suitable care at Vineland; but feeble-minded boys must still add to the weakness and degeneracy of the Home at Jamesburg, and epileptics and feeble-minded alike must seek, however vainly, to adjust themselves to the exacting conditions of the discipline of the State Prison and the two reformatories.

This summary of the penal legislation of the State would not be complete without some reference to the present state of our knowledge regarding crime, its causation and treatment. Recent studies in the personal and social history and the mental and physical condition of the inmates of prisons and reformatories have furnished a new basis for the understanding and classification of the criminal elements of our population. As an illustration of new facts so disclosed, the conclusions announced by Dr. Bernard Glueck, the eminent psychiatrist of Sing Sing Prison in the State of New York, as the result of his study of the population of that institution, may be cited, namely, that nearly 60 per cent of the men committed to the prison are clearly abnormal—29.1 per cent being imbecile, 18.9 per cent psychopathic, and 12 per cent insane. It can hardly be denied—as is asserted by the experts to whom we owe these conclusions—that such a defective element is harmed rather than benefited by much of the discipline that the ordinary prison or reformatory can supply, and that its members require a specialized treatment adapted to their several needs, such as can be furnished only in hospitals for the insane and homes for the epileptic and feeble-minded. New Jersey is well equipped with such institutions. What remains is to make them available for that part of our defective population that is classed as criminal or delinquent.

JURISDICTION AND PROCEDURE OF THE CRIMINAL COURTS

The ordinary criminal court system of New Jersey, comprehending the Supreme Court, the Court of Oyer and Terminer, the Court of Quarter Sessions, the Court of Special Sessions and the courts for the trial of juvenile offenders, can best be understood when it is realized that most of these courts are merely different functions of two independent but interlocking tribunals and that they are all administered by judges drawn from these two groups, acting separately or in combination. The two tribunals which exercise these varied functions are the Supreme Court of Judicature, commonly known simply as the Supreme Court, which consists of a chief justice and eight associate justices, and which exercises jurisdiction throughout the State, and the Court of Common Pleas, consisting of a judge in and for each of the counties of the State. Both these courts have a wide, general jurisdiction, civil as well as criminal, but it is only in the exercise of the latter that they assume the various forms which find expression in the criminal courts above enumerated.

Sitting alone, the Supreme Court exercises only an appellate jurisdiction in criminal cases, except in the rare case of treason against the State of New Jersey, in which it exercises original jurisdiction. But it is the justices of the Supreme Court, alone or in conjunction with the judges of the Court of Common Pleas, or the Common Pleas judges alone, who constitute and hold all the courts having a general criminal jurisdiction. Thus the Court of Oyer and Terminer is regularly held by a justice of the Supreme Court with or without the assistance, as may be more convenient, of the judge of the Court of Common Pleas of the county in which there is criminal business to be done, though in counties having 300,000 inhabitants the judge of the Court of Common Pleas may, in the absence of the justice of the Supreme Court, hold such Court of Oyer and Terminer alone. The Court of Quarter Sessions is held by a Common Pleas judge sitting alone, but with a jury to try the facts. The Court of Special Sessions is similarly held by a Common Pleas judge, sitting without a jury. The Juvenile Courts are, except in counties of the first class (Hudson and Essex), also held by the resident judges of the Court of Common Pleas. The jurisdiction of all these courts is the same, i. e., extends to the same class of cases, except that only the Supreme Court and the Court of Oyer and Terminer can try cases of treason or murder, and that cases of manslaughter cannot be tried in the Juvenile Courts. In practice, to avoid duplication of jurisdiction, the

Supreme Court tries no criminal cases but treason, and the Court of Oyer and Terminer none excepting murder, leaving all other indictable crimes to be disposed of by the Courts of Sessions, with or without a jury, and by the Juvenile Courts. In Hudson and Essex Counties special Juvenile Courts, held by specially appointed judges, have been instituted. The jurisdiction of all Juvenile Courts, ordinary and special, is peculiar in this respect that, while nearly co-extensive with that of the Courts of Sessions, it reaches down into the jurisdiction of the inferior courts, like those held by justices of the peace, police magistrates and recorders of certain cities, which deal with petty offenses, such as disorderly conduct, vagrancy and the like.

All of these courts, with the exception of the Juvenile Courts, go back to the beginnings of New Jersey history, the Supreme Court having been instituted by an ordinance of Lord Cornbury, the first governor of the United Province of New Jersey, in 1704, and the Court of Oyer and Terminer by an act of the Council of West Jersey in 1693; while the Court of Quarter Sessions (of which, as has been noted, the Court of Special Sessions is really a part, rather than a distinct court) was recognized as already in existence in the ordinance of Lord Cornbury above referred to.

Moreover, the procedure of all these courts is substantially identical, excepting that, where a juvenile offender, i. e., one from 8 to 16 years of age, is charged with an offense less than murder or manslaughter, a somewhat simplified procedure has been adopted. In all of them, with the exception just noted, the formal charge is submitted in the form of an indictment or presentment by the grand jury, following a preliminary hearing by a police or other magistrate, and the trial of the charge is conducted in open court, with the prosecuting attorney of the county representing the State and a paid or assigned counsel representing the accused. The verdict of guilty or not guilty is found by the jury, unless the accused has elected to be tried without a jury (in Special Sessions, or, being a juvenile delinquent, in the Juvenile Court), in which case the judge decides the question of his guilt or innocence. In case a boy or girl over seven years of age is accused of murder or manslaughter, the case takes the usual course (indictment by the grand jury, trial in open court by jury, etc.) just as though he or she had been an adult accused of the same crime.

The range of judicial discretion in determining punishments has been greatly enlarged in recent years. The judge may now, after a verdict of guilty has been rendered, make any one of the following

dispositions of the case: He may, in exceptional cases, suspend sentence and set the offender free to resume his normal life, without let or hindrance, subject, however, to be recalled at any time and given such sentence as the judge may see fit to impose within the statutory limits; or he may release the offender on probation, under the supervision of the probation officer of the county; or he may, within certain defined limits, sentence him to an indeterminate term of imprisonment in the State Prison, or, if he is a first offender under 30 years of age, in the Reformatory, or, if he is a juvenile delinquent, in the State Home. If committed to any of these institutions, the actual term of the offender's detention will be fixed by the board of managers of the institution or by the Court of Pardons, unless the judge who sentenced him should, before he is otherwise released, exercise the power to recall him and, by imposing a new and shorter sentence, effect his release.

But the judicial discretion is not exhausted by the three alternatives set forth. Instead of sending the offender to one of the State institutions, the judge may, in his discretion, if the proposed sentence does not exceed six months, commit him to the county jail, or, if the sentence does not exceed 18 months, to the county penitentiary or workhouse, where such institutions have been established; and this is as true of youthful offenders who are eligible for the Reformatory and delinquent children eligible for the State Home as of older offenders whose only alternative is the State Prison. Likewise the judge may, if he sees fit, commit to the State Prison youthful offenders and delinquent children convicted of prison offenses instead of to the institutions specially set apart for them.

Thus far the consideration of the criminal jurisdiction has dealt only with what are sometimes called the superior criminal courts. But there are, in addition to these, in all counties, inferior courts—courts of justices of the peace, and, in many municipalities, recorder's and police courts—which, besides their function of holding a preliminary examination of all charges of crime, have also the power to try petty offenders and to commit them, adults and children alike, for short terms of imprisonment to the county jails and workhouses.

As has been stated above, the courts of Quarter Sessions and Special Sessions may, after conviction, release the offender on probation instead of imposing the penalty of imprisonment. Release on probation depends entirely on the impression made upon the mind of the judge by the reputation of the offender and his past record, and lies wholly within the discretion of the judge. At the time of

release on probation the court fixes the probationary term, which may be just as long or as short as the court see fit to make it. The number of probation officers in the several counties varies. In any county of the first class there may be one probation officer and as many assistant probation officers as may be needed, not exceeding five, in addition to those already authorized by law, two or more of whom may be women. In any county of the second class there may be one probation officer and not more than three assistants, one of whom may be a woman; while in other counties there is but one probation officer. The rules and regulations governing probation are established by the Court of Quarter Sessions, and in general they provide for periodic reports in person, sometimes by letter, and make certain requirements as to employment and for the payment of fines or costs. The probation officers are supposed to supervise and observe the conduct of the probationer and assist him in his reformation. For violation of the terms of probation or return to criminal practices, the probationer may be rearrested, the probation revoked and he be sentenced in the same manner and to the same extent as though no order of probation had been made. In the case of juvenile delinquents, the court may, in its discretion, place the youthful offender on probation in the custody of his parents or guardian, and, where the home is a good one and the offender is still controllable, it is the practice of judges of the juvenile courts to make this disposition.

The organization and procedure of the criminal courts of New Jersey, while not entirely free from the inherited defects characteristic of American criminal procedure in general, enjoy an exceptional reputation as compared with those of her sister commonwealths. "Jersey justice" has become a synonym for a clean, impartial and speedy administration of criminal justice. But with the advance of science and of humanitarian sentiment, new conceptions of delinquency and of criminal responsibility arise, and these, from time to time, call for corresponding changes in judicial organization and procedure.

The reformatory element in punishment, recognized by the Legislature in the case of commitments of delinquents for indefinite terms to the reformatories for men and women and the State Homes for boys and girls—limited, in the case of reformatories, only by the maximum period of imprisonment prescribed by law, and, in the case of the State Homes, to the attainment by the inmates of the age of 21 years—still finds inadequate expression in the fixed term imposed on persons committed to the county penitentiaries and in the maximum

and minimum form of sentence under which convicts are committed to the State Prison. It is the opinion of the Commission that the form of indeterminate sentence employed in commitments to the reformatories might well be extended to all adults convicted of crime in the State of New Jersey, with the exception of those convicted of murder. But the Commission does not believe that a change of this importance, affecting the sentencing power of the courts, should be proposed without full consultation with the judges experienced in the administration of the criminal law, and it refrains, therefore, from making any recommendation on the subject.

PLACES OF DETENTION NOT DIRECTLY CONTROLLED BY THE STATE

The county and municipal jails are an integral part of the correctional system of the State. Not only are all persons, with insignificant exceptions, who ultimately find their way to the State institutions, previously lodged in these local places of detention, but more than one-half of the total number of persons committed to imprisonment for crime in the State serve their terms in the jails and other county institutions.

Our county jails are the oldest of our penal institutions. Though instituted primarily for the purpose of keeping in custody vagrants, debtors, and persons awaiting trial or execution, they were, almost from the first, also employed for the punishment of "fellons" and other malefactors.

The first workhouse was provided for by an act of 1748, which authorized the County of Middlesex to erect such an institution, but its purpose was rather to confine "disorderly or insubordinate slaves or servants upon application of their masters," than to inflict punishment upon criminals. The penal function of the workhouse was not clearly established till Hudson County erected its famous workhouse or penitentiary in 1869, followed by Essex County in 1873, and Mercer County in 1892. A municipal workhouse was provided by the City of Camden in 1913-14, and in 1916 bonds were issued by Middlesex County for the construction of a county workhouse. At the present time the three workhouses in actual operation contain a total delinquent population of nearly 700, about 100 of whom are women and girls, and over half of whom are persons eligible for commitment to the State Prison. The workhouses thus established and authorized came into existence partly to relieve the overcrowding of the jails and partly to satisfy the terms of sentences to imprisonment at hard labor, which the county jails notoriously failed to supply.

But the jails were, and still continue to be, notorious for many other defects than the failure to furnish adequate facilities for the employment of their inmates. The demoralizing idleness, injurious alike to health and character, the indiscriminate intermingling of all classes of prisoners, the general filthiness, the total lack of instruction in educational and religious matters, have been repeatedly called to the attention of the public and the Legislature from the report of the Prison Discipline Society in 1831 to the present time. That the county jails throughout the United States are the worst part of our penal system is asserted by all intelligent students. The record of our own jails, as disclosed in the History appended to this report, and in the statistics of the County Jails and Workhouses of New Jersey prepared for the Commission (attached hereto as Exhibit C), shows that New Jersey can claim no superiority over her sister states in this respect. In many counties the same conditions of idleness and overcrowding, of improper living conditions, of lack of proper medical care or of intellectual, moral, or religious instruction, of the indiscriminate intermingling of all classes of prisoners—the young and the old, the sane and the insane, the sound and the diseased, the decent and the depraved, hardened criminals and those innocent of wrongdoing—still persist. In October, 1917, the jail population numbered 1,368, of whom 139 were women and 35 children under sixteen years of age. Of this number 555 were serving time for criminal offenses, ranging from disorderly conduct to grand larceny and other serious crimes, 682 were held as “court prisoners,” to await the determination of their cases, and 39 as witnesses. During the year 1916, several counties not reporting, the records show that 15,546 persons were committed to the jails, of whom 1,334 were women and 798 children under 16 years of age. Of this number 7,711 were committed for sentence, 6,342 were “court prisoners” and 286 held as witnesses. At the same time the three workhouses had 2,324 inmates, 290 of whom were women. The law requires that debtors and criminals shall not be confined together and that children under eighteen years of age and persons detained as witnesses shall be kept apart and separate from other prisoners. However, few of the jails have proper facilities for the segregation of inmates, except the elementary one of providing separate quarters for men and women, and these humane and decent provisions are frequently disregarded.

It should be unnecessary to repeat the urgent recommendations of the official investigating commissions of 1869 and 1878, reinforced year after year by the State Charities Aid Association and by num-

berless private citizens in this and other states (1) that all these county and municipal institutions should be put under some form of effective state supervision; (2) that the jails be entirely transformed into places of detention for the accused and for witnesses, and no longer be used as penal institutions; and (3) that under no circumstances and on no pretext should children under sixteen years of age ever be committed to county or municipal institutions other than detention homes especially provided for their temporary custody.

* * * * *

THE LABOR PROBLEM IN THE CORRECTIONAL INSTITUTIONS

The problem of utilizing to advantage the labor of convicts—to their advantage as well as to that of the State—has for nearly a century taxed the ingenuity of all who shared the responsibility of prison administration. From the primitive forms of congregate labor practiced in the first State Prison, from 1798 to 1836, to the establishment of work shops and the persistent attempts of the Legislature and the prison authorities to work to advantage, one after the other, the various forms of the contract system, the record is one of constant, half-hearted experimentation, of generally increasing financial loss and of almost invariable failure.

In 1884, under the influence of labor agitation, an effort was made by the Legislature to put an end to the contract system and substitute in its stead the system of manufacture for state use. But this effort was vitiated by a subsequent statute, passed at the same session of the Legislature, permitting the employment of the "piece price" system, under which the contractors, instead of hiring the labor of the prisoners, took the manufactured goods at a fixed contract price, an arrangement which proved, in practice, to be more favorable to the contractors and less advantageous to the state than the obnoxious system which it displaced.

Thus the "lease" form of the contract system having been legislated out of existence, and the "piece-price" form having proved an even more disastrous failure, the annual deficit having increased from \$87,835 in 1885 to \$178,585 in 1911, the State decided to go the whole length of adopting the state use system exclusively. This was effected by the Act of June 7, 1911, which directed that thereafter all industrial labor in the penal and correctional institutions should be employed in the manufacture of goods for state use, but with a proviso, the probable effect of which was that any surplus of goods not so required might be sold on public account. It was, however, provided

by an act of April 14, 1913, that the contracts then in existence might be continued until sufficient state use industries had been established to absorb the labor of the inmates.

Doubtless it was the increasing pressure of labor agitation as much as the economic failure of the contract system, that led the Legislature thus to commit the state to the state use system. In this respect New Jersey was only repeating the experience of other states in which the labor organizations had effectively agitated for the abolition of a system under which free labor was exposed to the unfair competition of unpaid and sweated convict labor. As early as 1879 the Legislature had taken notice of the agitation by the appointment of a Commission on Prison Labor, which rendered a report recommending that the competition with free labor be reduced to its lowest terms by a diversification of prison industries and a restriction on the number of men to be employed in any given industry. The result of this recommendation was the act of March 25, 1881, forbidding the employment of more than 100 men in any one industry—a device which clearly missed the point involved in the controversy, which was not the *amount* but the *unfair character* of the competition maintained by the contract system. Even under the state use system, which the labor organizations have generally favored, convict labor will still compete with free labor. But if the system is fairly administered, with proper emphasis put on the general and industrial education of the inmates, and a proper wage scale established for them, the last objection to the competition will have been met. Under those circumstances it also is safe to assert that, if the purpose of the act of 1911 is fully carried out and an honest effort made to supply the requirements of the state for prison-made goods, the sale in the open market of any occasional surplus of goods that cannot be disposed of in the usual way will be equally unobjectionable.

The sincerity of this effort of the Legislature to solve the prison labor problem in the right way was evidenced by the fact that the act of 1911 created a Prison Labor Commission to direct the development of the new system and control its operation, and that in the following year the Legislature, by joint resolution, March 28, 1912, made provision for a Convict Labor Commission to formulate a comprehensive plan for the employment of all convicts, physically able, on the public roads, in public parks, in forestry and in such other ways, not in competition with free labor, as may suggest themselves. But the Prison Labor Commission, while authorized to direct the installation of state use industries in the several penal and correctional institutions, was

invested with no power to carry its recommendations into effect. In fact, from the institution of the Commission in April, 1912, down to the present time, its history has been a discouraging record of "orders" and "directions" issued by it to the managing authorities of the several correctional institutions and of appeals for appropriations, nearly all of which were ignored or met with the conclusive formula, "No funds." Only in the field of exploiting the market for institution-made goods, i. e., in requiring charitable and other state agencies to supply their needs from such goods—here, where alone it has real authority, has the Commission attained a real measure of success. This function the Commission appears to have performed with commendable firmness and discretion. But it is obvious that this must remain a very restricted function so long as it is not combined with the power to enforce the production of such goods as may be required, and such has, in fact, proved to be the case.

The result was that, though the act of June 7, 1911, abolished contract labor from the standpoint of legal theory, in 1917, six years later, but twenty men, on an average, were employed on state use activities within the state prison walls, while about 400 were still engaged in work on "piece-price" contracts.

The first and most fundamental cause for this failure was the conflict of jurisdiction in the control of the industrial activities of the prison which was thus created by the law of 1911 and subsequent legislation on this topic. In addition to the Prison Labor Commission, which was given general control and supervision over the employment of the inmates of all State penal, correctional or reformatory institutions," the Board of Inspectors, by the law of 1876, confirmed by the act of April 20, 1914, were also vested with "full control" over the general administrative policy of the prison. The principal keeper, as a constitutional officer of the State, regarded himself as responsible for the discipline and guarding of the prisoners when engaged in industrial operations. Further, the supervisor (fiscal agent since 1914) was the recognized industrial and financial manager of the state prison, while the governor of the state was authorized to pass upon the desirability of allowing the continuance or extension of the contracts. With such a conflict of powers, there is no reason for surprise that practically nothing had been done to improve the industrial situation within the prison walls down to the summer of 1917.

The second cause for the failure was the neglect of the Legislature to make the necessary appropriations wherewith to introduce the new equipment essential to the establishment of the "state use"

system, as well as to provide working capital for its operation.

The only attempt down to 1917 to introduce the new system in the prison came in 1915, when a small knitting establishment was set up—a most inconsequential movement, as it never employed more than 25 prisoners, and was poorly adapted to an institution containing none but adult male inmates. During 1917, however, steps were taken to provide for the introduction of a new “state use” industry, namely, the making of automobile tags. This industry will probably be able to start by the spring of 1918 and is expected to employ about 75 men.

In view of this practical failure, to date, in the introduction of the “state use” system within the prison walls, one must look to the development of extra-mural activities to discover the chief avenue through which “state use” industries have been developed by the prison authorities. This outside employment of prisoners was authorized by the act of April 11, 1910, and its subsequent amendments. In 1913 two road camps were opened for the employment of convicts on the roads of the state, and in 1915 a third, and in 1917 a fourth camp was established. These road camps have been a relative success. In addition to the hygienic and disciplinary value of the outdoor work, in 1916, the road camps nearly met their expenses, including the salaries of the deputies, while within the prison the expenses were almost exactly three times the receipts. In September, 1913, a prison farm was purchased consisting of 1,000 acres of waste land near Leesburg in Cumberland County. During the last year the prison farm was an expense of \$25,466, and the total receipts realized were only \$6,894, but the loss is at least partially offset by the increased value of the land resulting from the clearing and other improvements thereof.

In the meantime the prison finances have steadily become worse. In 1911, the total loss, including the salaries of the officers, was \$178,586; by 1916 it had reached \$233,694, though the number of prisoners serving sentence in 1916 was less than in 1911.

The industrial situation at the State Reformatory at Rahway since 1911 has been more encouraging than that which has existed at the state prison. Superintendent Moore has been, from the first, a strong advocate of the “state use” system, and the governing board of the Reformatory, in contrast to the inspectors of the State Prison, have consistently supported the efforts of the Superintendent to develop the system in the Reformatory. Industrial production commenced on a significant scale in 1915, and it has up to the present time

made considerable progress. In 1916 the first full year of the operation of the new system, orders to the value of \$21,420 were filled.

The farming activities at Rahway have been equally systematic and profitable. A large and well cultivated farm adjoining the Reformatory has been in operation for several years, the net gain from which in 1916 was \$23,203. Early in 1917, through the aid of the Governor and of the Comptroller, Newton D. Bugbee, a productive tract of land at Annandale in Hunterdon County, which had been acquired by the State for other purposes, was placed at the temporary disposal of the Reformatory as an additional farm. This has been cultivated by inmates during the past season with gratifying results. It is estimated that the net gain from this innovation in 1917 will approximate \$10,000, while the disciplinary aspects of the experiment have been entirely successful.

Road building has been carried on by the inmates of Rahway only to a modest degree, but in a highly profitable manner. Roads have been built for the city of Rahway, and in the fall and winter of 1917 a number of inmates were employed in building roads leading to the army encampment at Wrightstown.

While in the early years of the State Home for Boys, at Jamesburg, and, in fact, down into the present century, various industries were carried on under the contract system, there is at present very little mechanical industry in the institution. An adequate industrial plant exists, but is scarcely at all developed, either from the standpoint of productivity or from that of industrial training. A large farm is cultivated and this occupies the labor of the boys during most of the year, except in the winter months.

In the two remaining State institutions, as in those under county and municipal control, there has been little industrial development, with the exception of farming, which is carried on with success on a considerable scale at Clinton Farms and, on a more restricted scale, at the Trenton Home for Girls. In all the State institutions, moreover, the external clothing of the inmates is for the most part provided by their labor.

In conclusion, then, it may be said that the enlightened purpose of the state in legislating the contract system of prison industry out of existence and directing the substitution therefor of the state use system, has been almost completely nullified by the imperfect character of the legislation devised for the purpose and by the failure of the governing authorities of four of the five correctional institutions of the state to do their part in putting the new system into effect.

The Commission is of the opinion that no satisfactory solution of the problem can be devised that does not provide for an effective control of the entire system of prison labor either by the Prison Labor Commission or by such a central board of control as is recommended in the concluding section of this report.

The system of prison labor which we may thus be able to secure will aim not only to protect the State against the waste of its resources that the old system has entailed, but will be even more concerned to provide adequate industrial training for the inmates of the State institutions. Pending the complete development of such a system, the Commission believes that the employment of the inmates in road making, farming, land reclamation and other public work should be greatly increased. With the unlimited opportunities that the State presents for such public work, the Commission is of the opinion that the remaining contracts, under which a large number of men are still employed at the State Prison, should be terminated at an early date.

PARDON AND PAROLE

The pardon power is, under our constitutional system, vested in the chief executive of the nation and of the several states, respectively. In New Jersey, as in several other states, this function has been transferred to a Court or Board of Pardons which, in this State, is composed of the Governor, the Chancellor and the appointed members of the Court of Errors and Appeals. The Court of Pardons of New Jersey grants pardons by a majority vote, of which majority the Governor must be one.

The parole power came into existence in New Jersey in 1889 as an incident of a sweeping measure of clemency, which provided that, with certain exceptions, all inmates of the State Prison who had not previously been convicted of a prison offense, might after serving half the term for which they had been sentenced, be released on parole in the discretion of the prison authorities. Two years later (April 16, 1891) the Legislature enacted a law vesting in the Court of Pardons the power to allow qualified convicts in any of the penal institutions of the State to be at large, under such conditions as the Court might see fit to impose. From that date the Court of Pardons, which had theretofore been confined to the granting of executive clemency, has been the chief paroling power in the State.

The institution of the indeterminate sentence by an act of April 21, 1911, gave new scope and importance to the power of parole,

which was definitely vested in the Inspectors of the State Prison, without, however, withdrawing from the Court of Pardons the more extensive authority conferred on it by the act of 1891.

While, in a sense, the parole power vested in the Court of Pardons merges in or overlaps its pardon power, there is this difference, that a pardon is conclusive and final in effect, while a parole is granted on prescribed conditions, for a violation of which the person paroled may be recalled to serve out his term. It should also be noticed that, in the original act vesting the parole power in the Court, it was not bound by the restrictions as to the classes of offenders made eligible to parole. Thus the Court of Pardons might parole old offenders and those convicted of murder or other major crimes and need not in any case wait until the minimum term of the sentence has expired.

These broad powers of parole have been freely exercised by the Court, as appears from statistics gathered by this Commission. Thus in the fiscal year ending October 31, 1916, the Court of Pardons granted 334 paroles at the State Prison and the Board of Inspectors, the regular paroling authority of the prison, only 124. For the twelve months ending September 30, 1917, the inspectors granted 196 paroles and the Court of Pardons 375. Moreover, out of these 375 cases, 329 or 87.7 per cent, received their parole before the expiration of their minimum sentences. It would appear from these figures that the Court of Pardons is employing its parole power largely as an extended function of the pardon power and not in the sense in which the parole power is generally understood.

This anomalous situation of two competing and overlapping parole authorities has been further complicated by the assumption by the courts of what is in effect a power of parole, by exercising the authority of recalling for resentence convicts sentenced by them to the State Prison, the penitentiaries or to any other State correctional institution. The courts, under our system of judicial procedure, have always enjoyed the power of recalling for resentence a prisoner sentenced by them to a term of imprisonment, during the period fixed by law within which a new trial may be granted. This power, inherent in the judicial function, was enlarged by act of the Legislature, March 16, 1914, granting them the further power of recalling prisoners committed by them, at any time prior to the expiration of the sentence imposed or to their previous discharge or parole. While this power has not been exercised so freely as to constitute a serious interference with the due administration of justice, it is always available to a convict who fails to get relief from the Court of Pardons or

the local paroling authority. The net result is that New Jersey presents the curious spectacle of having three distinct and competing paroling authorities of varying jurisdiction, which can be invoked in turn and thus played off, one against another. Such a condition of affairs cannot fail to impair discipline and respect for authority in our penal institutions.

As now constituted, the regular paroling authority in the several correctional institutions (as distinguished from the Court of Pardons and the superior criminal courts which have jurisdiction as to all of them) is the board of control. While the powers of these boards vary as to the time when they may be exercised, they are in all other respects substantially the same. The Inspectors of the State Prison may parole an inmate only after the expiration of his minimum sentence, or, if he was committed for a definite term, only after the lapse of the period to which his sentence was reduced by law. In actual practice parole is granted as a matter of course at the expiration of the minimum term, except in those cases in which the applicant has had his minimum term extended as a penalty for misconduct in prison.

As all commitments to the four reformatory institutions are for an indeterminate period, limited in the case of commitments to Rahway and Clinton Farms to the maximum term fixed by law for the crime committed, and in the case of the two State Homes to the attainment of the age of 21 years, the boards of these institutions may grant parole at any time after commitment. All of these boards have by rule or in practice adopted a self-denying ordinance fixing a minimum of one year of detention before an application for parole will be considered. In Rahway parole is usually granted in a year to eighteen months after commitment; in the three other institutions, at the expiration of a year. Only in case an inmate has by misconduct forfeited the privilege of such early parole, is his first application refused, and only in the case of especially hardened and incorrigible offenders is the period greatly lengthened. In Rahway only may an offender be detained indefinitely, even beyond the legal maximum, by virtue of a special law providing that the period of incorrigibility shall not be counted toward the time for which his sentence may run.

Thus, in all the State institutions, is the aim of the indeterminate sentence defeated by the policy of the paroling authority. The inmate of the State Prison regards the minimum sentence imposed by the court as his actual sentence. The maximum prescribed has no meaning for him. The few months that may be added to the minimum by

the authorities of the institution, he regards as so much additional punishment imposed by them for the specific acts of misconduct of which he has been guilty. This is equally the attitude of the Prison authorities. If they think at all of the purpose of the law—to keep the wrong-doer in confinement until he has become a new man and has ceased to be a menace to the community—they ignore it or assume that the negative attitude of passive obedience to prison rules is sufficient evidence of reformation. Perhaps this is well enough in an institution which has never claimed to be a reformatory, especially in view of the fact that the courts, being aware of this practice, take it into account in fixing the sentence. But this excuse for the practice cannot be pleaded by the other four institutions whose management and discipline are definitely aimed to effect the reformation of those committed to them. It will hardly be contended that a year or eighteen months of such treatment as they afford their inmates will in most cases suffice to correct the depravity or overcome the bad habits or afford the education and industrial training required to fit them to lead useful and honorable lives after their release.

As already stated, a parole operates as a discharge, subject to certain conditions which, in the case of the State Prison, are prescribed by the Governor, in the case of the four other institutions, by the paroling authority. In theory the paroled convict remains under surveillance to the end of the period for which he might have been held, unless he is sooner pardoned, but in practice the actual supervision is rarely continued for more than a year. Violation of any of the conditions on which the parole is granted subjects the paroled offender to the liability of being returned to the institution from which he was paroled, but this extreme penalty is seldom exacted except for a further criminal offense or other grave misconduct.

The paroled prisoner is committed to the custody of the parole officer of the institution, or, in practice, to some responsible citizen. Juvenile delinquents may be paroled to their parents or guardians, if these are responsible. As the State Prison has only one parole officer to look after more than 1,200 paroled convicts, Rahway only two to supervise the conduct of nearly 700, and Jamesburg three, to look after nearly 1,000, it is obvious that the supervision actually exercised in these cases is little more than nominal. The two other institutions are better off in this respect, the Home for Girls having three parole officers for 225 girls on parole and the Clinton Farms Reformatory having one (with several volunteer assistants) for about 50 women. Even in this last named institution, from which approximately 80 per

cent of the inmates are paroled at the end of a year of residence, it is reported that of 160 women paroled from the beginning of the institution 56, i. e., 35 per cent, were guilty of violation of parole and were returned or had disappeared.

In view of these facts—the fixing of a minimum term of imprisonment where none was provided by law, the general practice of paroling the inmate at the expiration of his minimum term, the short period of surveillance and the inadequacy of the supervision exercised—it is generally conceded that the administration of the parole law very generally fails to attain the purpose for which it was designed.

The system of “indenturing” inmates, which obtains in the Jamesburg and Trenton Homes, under the laws creating them, appears to be nothing more than a modified form of parole, in which a closer and more effective supervision may be exercised over the inmate than is usually possible in ordinary cases of parole. The boy or girl is committed to the care of a family for employment at stipulated wages and under careful restrictions as to the treatment which he or she is to receive. An advantage of the system is that the wages of the indentured child, over and above maintenance and clothing, is paid directly into the treasury of the institution, where it is held as a savings fund until final parole or discharge. The system is reported as working very well. In view of the fact that the indentured individual is not “bound out” to the employer, and that the practice confers on the latter no legal powers of detention, the term by which the system is known appears to be a misnomer.

ADMINISTRATION OF THE CORRECTIONAL SYSTEM—CENTRAL BOARDS VERSUS LOCAL BOARDS

The history of the correctional institutions of New Jersey, which is set out in the foregoing pages and is covered in detail in the History,² has followed the same general course as that which has marked the development of similar institutions in other states of the Union. First, we have the summary punishment of the offenders, by fining, branding, deportation or death, a system that left little occasion for places of imprisonment—the county jails, which had been primarily instituted for the confinement of vagabonds and insolvent debtors, being also used as places of detention for those awaiting the determination of their guilt or innocence or the execution of the sentence imposed by law. With the gradual development of imprisonment as a method

²See Volume II of this report.

of punishment, the jail, being the only institution available for the purpose, became the place of imprisonment for those condemned to this form of punishment, the result being the indiscriminate confinement, together, of those undergoing sentence and the ordinary jail population. Later, with the overcrowding of the jails, came a recognition of the necessity for separate places of confinement for those undergoing punishment, resulting in the creation of the state prison or penitentiary; and, still later, the recognition of differences of type among those undergoing sentence, causing the institution, one after another, of separate places of imprisonment for youthful first offenders and juvenile delinquents.

The method of development of these institutions has determined the method of management adopted for them. They came one at a time, each in response to a distinct need. Each was treated as a separate unit, to be separately managed in accordance with the ideas which had governed its creation. Except in the minds of those who were struggling with the baffling problem of crime and delinquency as a whole, there was little consideration of the advantages or disadvantages of a unified, as compared with a separate, management of the institutions.

The diversity of management of the several institutions, resulting from this system of separate control, made inevitable a comparison of the spirit and methods governing the older and the newer types of institutions and of the results of their management, and gave rise in many minds to the conviction that the reformatory purpose of punishment, which was the keynote of the latter class of institutions, was too generally ignored in the management of the former class. At the same time, other observers had become alarmed by the enormous and increasing cost of the correctional establishments. Accordingly the system of separate control came under criticism from two distinct sets of influences—on the one hand, from those who, on humanitarian grounds, desired the leveling up of the management of all the correctional institutions to the highest point attained by any of them, and, on the other hand, from those who desired a more efficient financial management of the entire system. As a consequence of this, during the past quarter of a century, there has developed in all the states of the Union a searching inquiry into the advantages, and, in many of the states, an elaborate experimentation in the working, of unified boards of management, designed to deal with the correctional institutions as a whole.

But the tendency toward unification of institutional management

did not stop with the correctional system. The discovery, resulting from recent scientific study of the inmates of correctional institutions, that a large proportion of such inmates are not essentially different in mental capacity and responsibility from those who fill the charitable institutions for the insane, the feeble-minded and the neglected, has produced a growing conviction that the two sets of institutions are in essence interdependent parts of a single system for dealing with the allied social problems of delinquency and defectiveness. Accordingly, on scientific, as well as on humanitarian and business grounds, this experimentation in unified management has extended so far in some parts of the country as to sweep together, not only all the correctional institutions, but all of the charitable institutions as well, under a single management. As early as 1877, the state of New York placed all its distinctively penal institutions, including the asylums for the criminal insane, but not the reformatories, under a single administrative control. The larger scheme, of placing the charitable and correctional institutions together under a single, unified management, was adopted by Wisconsin in 1881. Up to the year 1914 six states had adopted the plan of a centralized administration of all their correctional institutions and in eleven others both the charitable and correctional institutions had been brought together under a single management.

The hopes of the founders of the new system, like so many hopes of men and women who have dealt with the correctional problem, have not been realized. The goal has been found to be still far away. The reasons attributed for the failure of the central board to realize the expectations of its advocates have been many. A controversy has been going on for almost a quarter of a century as to the relative merits of the local and the central system of management.

In behalf of the system of centralized control it is contended that a central board, dealing with the correctional system as a whole, would be able to secure a more economical and efficient administration of the several institutions, both in making purchases and in the operation of the industries, together with a proper distribution and diversification of the industries, so desirable from the point of view of the training of the inmates for future usefulness as well as from that of the economic interests of the state; that it could set up standards in matters of discipline, of education, of mental and physical examination and treatment, and of general management, resulting in a general leveling up of all the institutions to a common level of excellence; that it would, through its study of the comparative needs of all the institutions, be enabled to submit to the legislature a general budget, thus doing away

with the present competition of the several institutions for appropriations, and finally that, by its study of the correctional system as a whole and through the education of the public, it would be able to secure needed reforms in penal legislation and in the administration of criminal justice, as well as in the correctional system itself.

On the other hand, in behalf of the system of separate control, it is argued that the local board, having to do with only a single institution, is able to bring to its management a personal interest and a degree of devotion which a central board, with its larger responsibilities, could not be expected to develop; that, as opposed to the uniformity which a central board would almost certainly aim to secure, the local board tends rather to a more flexible system of management and to methods of experimentation, which are so essential in the effort to perfect ways of dealing with the varieties of human nature that are found in our correctional institutions, and, finally, that a central board, with its vast power and patronage is more likely to attract that political influence which has everywhere played such a disastrous part in the correctional system.

That there is force in these arguments, on both sides, cannot be denied, and one who has carefully studied the operation of the system of centralized control in the states that have experimented with it will be the first to recognize that the system has not met the expectations of those who advocated and devised it. Nevertheless, the search for the ideal system of central control goes on, because of the persistent belief that some greater degree of unity in the policy and management of the correctional institutions must be attained if the problem is to be adequately dealt with.

Your Commission believes that in this, as in all other schemes of government, the attitude of the people toward the institutions that may be set up will determine the character and development of such institutions much more than any frame of government that the wisdom of the legislature can devise. The aim should be to institute a plan that will give scope for growth, that will hold out a reasonable hope of the prompt correction of abuses, and, what is perhaps of as great importance as anything else, that will furnish the fullest opportunity for the continuous education of the people of the state as to their responsibilities with respect to the correctional institutions.

From its study of the problem the Commission has come to the conclusion that a system may be devised which will give to the state of New Jersey the benefits of a centralized control of its correctional system as a whole, but which will still leave to the separate institutions

the advantages of the personal interest and devotion which have been such important factors in their development. In reaching this view the Commission has been somewhat guided by the precedent of the state educational system, in which a general authority over all public institutions of education has been successfully combined with local control in the several counties of the state. This plan of organization seems to recognize that in the problem of institutional management we are striving for a solution in the same way that a solution has been sought for so many of the problems that have come up in the workings of American democracy, in the effort to secure the efficiency that goes with centralized authority without sacrificing the local interest which, even at the cost of efficiency, is one of the most valuable features of government.

The Commission is not blind to the possibility that the power thus entrusted to a central board of control might be misused from wrong motives or inexperience or carelessness. What may be hoped to be accomplished by this plan is the creation of a system which the public sentiment of the state will require to be kept free from partisan politics—as free as public opinion to-day generally requires the schools to be kept. As a means to this end, it is believed that, like the State Board of Education, the proposed board of control should be composed of public-spirited citizens serving without compensation. As in the case of the schools, also, it is hoped that more and more of the men and women employed in the management of the correctional institutions will be trained experts, guided and stimulated by the board of non-experts, who will not interfere with technical management any more than boards of education do, but who, like boards of education, will determine the larger matters of policy, to the end that the expert managers of the institution should always be responsible to the public opinion which is so essential to the system of democratic government.

The plan that will be recommended to accomplish these results comprehends only the five correctional institutions surveyed by this Commission. But, as has been pointed out above, the study of the problem has disclosed the existence, in New Jersey as well as in many other states, of a strong sentiment in favor of a more sweeping measure of institutional control, which shall bring all the charitable as well as the correctional institutions under a single, unified management. Applied to New Jersey this larger plan would demand the creation of a central board of charities and correction, which should exercise general authority over the management and development of the entire charitable and correctional system of the state and which would in

the first instance take over the control of the five correctional and the eight charitable institutions and, perhaps, of the two distinct charitable agencies, the State Board of Children's Guardians and the Commission for the Amelioration of the Condition of the Blind, as well.

The additional advantages of this wider plan are (1) the desirability of bringing under a single management two groups of institutions whose problems are on the whole so closely correlated and of providing a comprehensive system for transferring the insane, diseased and defective inmates of the correctional institutions to the specialized charitable institutions available for their several needs; (2) the opportunity of presenting to the legislature from year to year the results of a comparative study of the needs of the charitable and correctional institutions for funds for their maintenance and improvement, thus doing away with the inequalities and injustices of the present system of competition for appropriations; and (3) the completion of the state use system of prison industries by placing the productive as well as the purchasing capacities of the charitable institutions, along with those of the correctional institutions, under a common control.

The dangers of the larger plan are substantially the same as those pointed out above with reference to consolidating the management of the correctional institutions, accentuated by the fact that the problems of management would be greatly increased and multiplied in the larger unit and that the effect of mismanagement or of political control would be correspondingly more disastrous. It may also be conceded that a central board, responsible for the administration of such a large number of institutions and agencies of different types, would be still farther removed from the individual institutions, with their individual problems, and that the difficulty of finding an expert executive to direct the administration of the entire system would be greatly enhanced.

Your Commission has considered all the foregoing questions with great care. Its conclusions and recommendations in this respect, as in respect to other matters covered in this report, are embodied below.

CONCLUSIONS AND RECOMMENDATIONS

(A) CONCLUSIONS

1. That the correctional system of New Jersey, with a state prison, supplemented by two reformatories, for men and women, and two state homes, for boys and girls respectively, and with some provision for the specialized care of insane and mentally defective delin-

quents, is, upon the whole, fairly abreast of the penal systems of other progressive states, but that it is still seriously defective in failing to make adequate provision for the identification and proper care of the mentally afflicted and irresponsible members of its delinquent classes.

2. That the lack of a centralized authority, endowed with sufficient administrative powers to secure the co-ordination and more efficient management of the several correctional institutions and agencies of the state, is the most serious defect of the existing system.

3. That the various systems of prison labor, heretofore and at present employed in the correctional institutions of the state, have, excepting in the Rahway Reformatory, proved a disastrous failure, and that the failure of the state-use system, authorized by the laws of 1884, 1911 and 1914, to attain any reasonable measure of success is due primarily to the failure of the legislature to invest the Prison Labor Commission with adequate authority and to make sufficient appropriations for equipment and working capital.

4. That the indeterminate sentence, and the parole system, instituted as an adjunct thereto, have proved largely ineffective, owing (1) to the multiplicity of authorities vested with the paroling power, (2) to the short periods of detention of inmates in the reformatories and state homes, and (3) to the fact that a wholly inadequate force of parole officers is provided to exercise the necessary supervision over delinquents at large on parole.

5. That the education afforded the inmates in the correctional institutions of the state is wholly inadequate, and that where, as at Rahway and the other distinctively reformatory institutions, a competent system of elementary education is administered, no systematized industrial or vocational training is even attempted, whereas, at the state prison, hardly any education of any kind is supplied.

6. That the method of discipline in force until quite recently in the state prison has been marked by a general attitude of severity toward the inmates and an indifference as to the conditions under which they have been required to live, a condition resulting in the infliction of cruel punishments and not infrequent affrays; that the exact degree of criminal responsibility for the outcome of such affrays can only with difficulty be ascertained in criminal proceedings; that irrespective of whether or no the acts of individual keepers involved in such affrays in the past have or have not gone beyond the proper bounds of self-defense as permitted by the laws of the state, there can be no doubt in the mind of anyone who has carefully examined the recent history of the prison that many of the men who have passed

years of their lives in controlling prisoners under the repressive conditions that have existed at Trenton, constantly conscious of the necessity of self-defense under the conditions which they were themselves helping to create, have by their very training become temperamentally unfitted to serve in the important capacity of a prison keeper; that it is one of the first duties of a new management of the prison to carefully consider the prison personnel and by a proper exercise of the procedure of the civil service law to provide for the discharge or retirement of those who are upon examination found unfit for the performance of their duties.

7. That, notwithstanding recent noteworthy improvements, the state prison is still not sufficiently reformatory in character, and that the present crowded site in the city of Trenton and the present buildings and equipment are wholly inadequate to furnish the proper environment and facilities for a reformatory institution.

8. That in view of the facts stated in the last preceding paragraph, it is undesirable to expend any further considerable sums in the erection of additional buildings on the present site of the state prison or in the reconstruction of the old buildings now standing.

9. That labor conditions in the state prison are of a most unsatisfactory character, both from the financial point of view and from that of furnishing useful employment to the inmates, and that the remaining contracts, in which inmates are still employed, are an obstacle rather than an aid to the speedy and proper solution of the problem.

(B) RECOMMENDATIONS

These conclusions have led the Commission to make the following recommendations, which are herewith submitted for such action as to the governor and legislature may seem proper:

1. The Commission recommends that the present legislature provide for the institution of a central board of control, charged with the general administration of all the correctional institutions of the state, and for a local board of management for each of such institutions; that such central board shall be composed of the governor and of eight members to be appointed by him, with the advice and consent of the senate, who shall receive no compensation for their services, and shall include not less than two women, such central board also to take over the powers and functions of the Prison Labor Commission, and to exercise a general power of supervision and visitation over all local places of detention of those accused or convicted of crime; and that such local boards, to consist of five members each, shall retain the

parole power now exercised by the separate boards of control and shall, subject to the general authority of the central board, be vested with powers of management of the institutions to which they are respectively attached. It is further recommended that such central board shall exercise its powers of administration and the supervisory powers which may be vested in it, through an expert commissioner of correction, to be appointed by it and who shall be removable by it in its discretion, and that such commissioner shall have the power of appointing, subject to the approval of the central board, such expert deputies, or bureau chiefs, not exceeding six in number as may be authorized, to assist him in the administration of his office, as follows:

- (1) A medical director;
- (2) A dietician;
- (3) A director of education;
- (4) A director of industries;
- (5) A statistician, and
- (6) A chief parole officer.

In order that the divided control here suggested shall not result in friction or in a paralysis of authority, it is recommended that the local boards of management shall be appointed by the central board, and that the central board shall have authority from time to time to make general rules and regulations pursuant to which the local boards shall manage their respective institutions.

2. The Commission conceives that the authority conferred on it by the legislature does not extend to the making of any recommendation affecting the management of the charitable institutions of the state, which it has not investigated, and which were specifically referred to a distinct commission charged with that duty. But if the legislature should, in its wisdom, decide to enact a more comprehensive measure, putting the correctional and charitable institutions of the state together under a single board of control, then this Commission would respectfully recommend that the plan submitted above for the control and management of the correctional institutions be extended so as to include the charitable institutions and agencies as well.

3. The Commission recommends that the legislature repeal the act of April 16, 1891, vesting the power of parole in the Board of Pardons.

4. The Commission recommends that the legislature repeal the act of March 16, 1914, enlarging the power of the courts of criminal

jurisdiction to recall for resentence convicts previously sentenced by them to terms of imprisonment.

5. The Commission recommends that the present legislature adopt a concurrent resolution providing for the submission to the people of the state of an amendment to the constitution striking out the present constitutional provision with respect to the keeper of the state prison.

6. The Commission recommends that the present legislature enact appropriate legislation simplifying the procedure for the transfer to a hospital for the insane, or to a home for the feeble-minded or to the Village for Epileptics, of insane, imbecile and epileptic inmates of the penal, correctional and reformatory institutions of the state.

7. The Commission recommends that the reconstruction of wing 3 of the state prison, for which provision was made by the last legislature, for the construction of a dining hall and assembly room, be discontinued and the funds appropriated for that purpose be returned to the state treasury.

8. The Commission recommends that the existing contracts in the state prison be terminated not later than July 1, 1918.

In the foregoing recommendations the Commission has confined itself to matters which seemed to it to require immediate action and particularly to such as were essential to the creation of a new and better system of administration for the correctional institutions of the state. The study whose results are embodied in this report have, however, disclosed many other things which, in the opinion of the Commission, require correction. But it has seemed to the Commission that these may well await the determination and recommendation of a central board, such as has been recommended above. They will thus receive the fuller consideration which such a board, aided by its expert advisers, after full consultation with judges and others possessing a wide experience of penal administration, can give to the problem.

At the present time, when the great world war is making such unprecedented demands upon the resources of the country, it seems to the Commission especially undesirable to make specific recommendations requiring large outlays of public money. It is the hope of the Commission that by the institution of a new system, such as is here proposed, a substantial step forward may be taken and that that step forward may be retained.

Mr. John P. Murray, of the Commission, signs this report with the reservation that, while he approves of the creation of a central board of control for all the state correctional institutions, he is of the

opinion that the proposed commissioner of correction, acting under the general guidance of such central board, should be responsible for the management of the institutions and that there should be no local boards for the separate institutions.

CRIME: MODERN METHODS OF PREVENTION, REDEMPTION AND PROTECTION¹

WILLIAM G. HALE²

The obligation of society to the individual who is given to criminal practices, or who possesses criminal tendencies, or who, whether innocent or guilty, has been accused of crime, is no longer debatable. Indeed, in a country where government rests upon the shoulders of the governed, and is for the governed, in a very real sense, the duty which society owes to the individual is only another name for the duty that society owes to itself. Each member of society faces not only the possibility of being accused of crime, but also the potentialities of becoming himself involved in criminal practices. Digressions from the most rigid codes of righteousness, lead by almost imperceptible gradations into the dark fields of criminality. Even so earnest a well-doer as the Apostle Paul said to the world that the good that he would he did not, and also the evil that he would not, he did. It is obvious, therefore, that the safeguards and helps with which we surround our neighbor (and is not he who has fallen among thieves our neighbor, indeed?), we at once surround ourselves and our sacred firesides. Verily, with what measure we mete, it shall be measured to us again.

Moreover, society's fight is not with the individual, but for the individual. Man is not born a criminal. The innocent babe born in the vilest dive is not a criminal. If in later life his footsteps lead him into the mire, it is because the mire is there and the allurements of the ensnaring marsh-lights of evil are flashed about him during those impressionable years when his gaze should be directed to the mountain peaks of honor and honest toil, and when his hours of play should be spent in the sunlight of virtue and love. Probably nowhere in the whole gamut of human endeavor is the maxim "that an ounce of prevention is worth a pound of cure," so true as it is in our dealings with the problem of crime. Our duty is plain, our goal is clear; but the steps by which we can best discharge the duty and attain the desired end are not always obvious, nor the construction of the ma-

¹ Presidential address before the Illinois Society of Criminal Law and Criminology, Chicago, May 31, 1918.

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chinery therefor easy. It is always easier to map out the larger plan of campaign than it is to evolve and fit into the proper places numerous and essential details. Moreover, in our attempts to realize our aims, we find at times that the moral sense even of the better element of society is not sufficiently aroused to give active support to the enterprise; whereas, the depraved sense of society stands in vigorous and united opposition to us, fighting, indeed, with the vigor of one who knows that his time is short.

In dealing with the problem of crime in an adequate and complete way, the campaign must be waged through three stages: First, attention must be given to preventive measures; second, to redemptive or reformatory measures, and, last, to protective measures. In a very real sense, of course, that which prevents the individual from embarking on a life of crime and that which redeems and restores to his rightful place the one who has committed his first offense are at once protective, but there will always remain a certain residue who must be dealt with chiefly from the standpoint of society's protection. In spite of all we can do, the habitual criminal we shall long have with us.

What, then, of preventive measures—those measures calculated to keep evil influences from seizing the individual during the formative years of his life and leading him deeper and deeper into a life of crime, until at last it is almost impossible to penetrate the hardened crust and find the innocence of childhood and the glory of manhood that lie beneath it? Such measures are numerous. Some of them have been taken; for example, laws and ordinances are common against the selling or giving of liquor or tobacco to children of tender years, say under sixteen or eighteen years of age; laws against employing children in places and in kinds of employment that bring them under questionable influences; laws against taking indecent liberties with children, or in any way contributing to their delinquency; likewise, laws against the printing and distributing of obscene literature, and provisions for the censoring of motion picture films. Both of these latter steps could very well be carried further. Evil suggestions are a prolific source of evil actions. No effort should be spared to bring up our young people with clean minds. It is not the blatantly vile picture or book or play alone that should be prohibited. Such pictures and books should be condemned as a matter of course. The real effort should be rather to rule out the more subtle suggestions of evil and crime. In this connection some censoring of the daily press would not come amiss. The glittering recital of the details of all manner of

crime played up on front pages of daily papers and cried out by newsboys rivals the stories in Nick Carter and the Police Gazette. Even the adult mind can well afford to feed upon something other than the offal of human experience. And of like, or still better, effect are the efforts that have been made to keep children occupied in wholesome activities, such, for example, as the effort to keep them in school longer than formerly (an effort, by the way, that will bear a larger fruitage when more attention is given in school to teaching the lessons of true patriotism and good citizenship, even though at the expense of a few sums); the equipping in various parts of the large cities of playgrounds suitably supervised, and the encouragement of systematic gardening by children. Every encouragement should be given to the further development of each and all of these activities. They, indeed, make more for the upbuilding of character than a thousand "don'ts."

It is impossible in the time at my disposal to even touch upon, much less to develop, all of the things that may and should be done to prevent the formation of criminal habits. They are numerous and varied. Juvenile court and probation officers, charitable and social workers are more familiar with them than most of us, and have striven energetically to carry them out. Every one knows, for example, that there is a clear relation between poverty and crime. Every step, therefore, toward the alleviation of poverty, toward the improvement of tenement house districts, toward the keeping of mothers at home with their children are steps toward the prevention of crime. All of the efforts which are today being directed at these sources of criminality are worthy of the active support of such an organization as ours. If our Society of Criminal Law and Criminology were fulfilling its full duty it would be bringing together in large numbers representatives from every organization and agency that touches the problem of crime at any point, with a view to co-ordinating the various efforts and to giving tangible, concrete and dynamic expression to them. The great weakness in all efforts at reform is a lamentable lack of co-operation; a failure to appreciate the value of concerted action among those who are interested in reform. The forces of evil are always organized and active. They cannot be defeated except by the organization and well-directed forces of righteousness.

The most important single crime-preventive step that can be taken is the total nation-wide abolition of the liquor traffic. That this vicious business has been a most potent factor in the production of criminals and in giving added momentum to those already started on

the highway of crime, is today beyond debate. The saloon and its boon companions—the gambling den and the brothel—have been the crime-breeding cesspools of human society. They have borne their evil fruitage a hundredfold in the weakened will and broken manhood of the drinker himself, and the consequent unchaining of his vicious propensities, and a thousandfold again in ruined homes, abandoned wives, and neglected children. It requires no vivid imagination to picture the crime-laden streams that have been issuing through the years in a hundred directions from these sources. Moreover, it is not alone because of such evil fruitage that the liquor business is to be condemned. It has never stood for law and order—indeed, its organized opposition to law enforcement has been, for years, a by-word. It is the brazen embodiment and political representative of practically all the forces that stand in opposition to decent government. The political influence of the liquor business has been evil and only evil. From beginning to end it has not only repeatedly and effectively blocked the enforcement of wholesome laws, but what is even worse, has bred contempt for law in a land where the lax enforcement of law is all too prevalent. From the standpoint of law enforcement, if from no other, the whole institution should go. Let us hope that the great State of Illinois will resolutely set itself to secure at the next session of the Legislature the approval of the amendment to the Constitution of the United States providing for national prohibition. And may I also express the wish that this society, recognizing as it must the relation between the liquor business and crime, will take active steps to aid in the campaign.

Second—Of redemptive measures: If our first duty is so clearly to keep the individual from committing his first offense, it is quite as true that our second duty is to redeem, if possible, the person who has started upon the path of waywardness, and to help him plant his feet again on firmer ground. The establishment of the Juvenile Court, the passage of our probation and parole laws, and the establishment through private enterprise of prisoners' aid societies, bespeak a clear recognition of this duty and constitute efficient steps in its discharge. But many things remain to be done. There is still a crying need for better prisons, especially in the towns, cities and counties. While serving to deprive a man of his full freedom, our prisons should still, as far as possible, express the humanity of man to man. New hopes are not born in dark and musty cellars. No system of penal institutions is complete today without prison farms. Besides their regenerative influence upon the prisoner, they can be

so managed as to constitute a good pecuniary investment by the state. Apology should be made for suggesting a "pecuniary" reason in behalf of the prison farm. I should not suggest it were it not for the lamentable fact that there are still some people who are willing to barter manhood and womanhood for a few paltry dollars.

"Ah! money, and the evil lust for gain;
'Tis this that ruins cities, drives a man from home,
Perverts the best of men to basest deeds,
And teaches all to play the knave."

So speaks the voice of Socrates from the ancient days.

As redemptive measures, our probation and parole laws have added vital wheels to our machinery of justice. They have gone far toward enabling us to deal with the individual as an individual and not as mere human grist, to be fed into an unthinking machine, and have thus made possible more ample provision for his reformation. In every case where a person is charged with crime, there are two wholly distinct questions presented: First, was the crime committed by the accused, and, second, assuming that it was, what should be done with him? Moreover the considerations that should enter into and the machinery for the determination of the one should be as distinct from the other as the questions themselves in kind and purpose are distinct. The two questions have always to some extent been recognized, but that recognition has been unofficial and the machinery for dealing with them hopelessly inadequate. Jurors, where given the necessary information, have long been disposed to take cognizance of them, but have been forced, by restrictions of the law of evidence, to act upon incomplete information, and by other phases of the law of procedure to translate this recognition into action by indirection. They have usually resorted to the unfortunate alternative of an arbitrary verdict of acquittal, in cases where the defendant was clearly guilty of the offense charged, in order to extend mercy where mercy, in some measure, has been due.

Probably no one thing has been more responsible for the so-called "miscarriage of justice" through the alleged foolishness of jurors than this attempt to combine in one proceeding and by a single one or two-word verdict the trial of the crime and the trial of the man—one involving a question which is wholly formal and which may be determined by rules applicable alike to all cases; the other involving individuality and depending for its proper solution upon considerations as varied as human life and human experience itself. Probation

and parole laws, as they exist today, are a step in the right direction, but only a step. We should go further. The complete segregation of these two questions seems to offer the only final and satisfactory solution of the problem.

Fair treatment of the accused paves the way for his reformation. We must do all in our power to disabuse his mind of the feeling that the state is his enemy and in no sense his friend, and thus prevent the development in him of an unfortunate spirit of revenge. This can be accomplished, at least in part, by a more adequate provision for his defense. In this connection it would seem appropriate to mention the need in this state of provision for a public defender; that need being particularly urgent under our present procedure. It is the function of the state not only to convict the guilty, but also to acquit the innocent, and, as already pointed out, to deal justly even with those in fact guilty. Moreover, it is desirable that tangible expression should be given to this dual function. In theory we recognize it today. The public prosecutor is sworn to uphold the law, not to convict and hound the accused; but a short-sighted public measures the efficiency of the prosecutor by the number of notches on the stock of his official gun. His continuance in office depends upon his efficiency determined by this measure. Moreover, he is aided and abetted to this end by police officials and public or private detectives, who are equally anxious to hold a victim up to the public gaze. It is already recognized that every person accused of crime is entitled to counsel to defend him. If he cannot employ an attorney, the court will appoint one. But attorneys appointed by the court are either young or inexperienced or indifferent because of serving without pay. If, moreover, the trial is in the police court and the attorney is even employed by the accused, he is usually a mere police court vulture, bent only upon getting his client's few cents or dollars, and then bluffing him into thinking that he has done something for him by a little blatant pettifoggery. It is as true that the poor and unfortunate are under-defended as it is that the rich and powerful are over-defended. This evil has been met very satisfactorily in a few places, notably in Los Angeles, California, through the creation of the office of public defender, carrying ample financial provision to place a capable official in charge with an adequate corps of assistants. The function of this official is, of course, to help only those who are too poor to employ competent counsel. The need of such an official in this state is obvious, and the success with which this work has been

crowned in Los Angeles is sufficient to challenge our serious and active attention.

I have but one more need to present. It relates to the problem of the habitual offender. In spite of every good influence with which we may be able to surround the infancy and developing years of the lives of young people, and in spite of all the efforts we can make to redeem those who have taken their first wayward steps, we shall find that some individuals are immune to all such efforts and are bent with an unyielding will upon a life of crime. Against such as these society must be protected. The attempts that have thus far been made to deal with this class of individuals have been hopelessly inadequate. We have on our statute books at present only one provision relating to this large problem. By a statute enacted in 1883 [Criminal Code of Ill., section 473 (1)], it was provided as follows:

"That whenever any person having been convicted of either of the crimes of burglary, grand larceny, horse-stealing, robbery, forgery, or counterfeiting, shall thereafter be convicted of any one of such crimes, committed after such first conviction, the punishment shall be imprisonment in the penitentiary for the full term provided by law for such crime at the time of such last conviction therefor; and whenever any such person, having been so convicted the second time as above provided, shall be again convicted of any of said crimes, committed after said second conviction, the punishment shall be imprisonment in the penitentiary for a period not less than fifteen years; Provided, that such former conviction or convictions, and judgment or judgments, shall be set forth in apt words in the indictment."

It will be observed that after the lapse of a certain length of time, of longer or shorter duration, even under the provisions of this statute, the hardened and confirmed criminal is turned loose to prey upon society. Moreover, no provision is made under this statute to take care of the individual whose offenses are not of the most serious character, and yet who is a real menace to society not only by reason of the crimes that he himself may commit, but by reason of the influence he may exert over others. Also, no provision is made for taking an individual into custody or retaining him in custody on the sole ground that he is an habitual offender. If, as often happens, his past record is not known when he is indicted for a specific crime, all opportunity, so far as this statute is concerned, to refer to his past life or to deal with him in the light of his past life, is lost. As a seeming satisfactory solution of this problem, I should like to lay before the society a measure drafted and presented a few years ago to the State Legislature of the neighboring State of Wisconsin. In that measure

all of the shortcomings just pointed out in our law are adequately cared for. The provisions of the law there proposed are as follows:

Sec. A. "Any person who has been convicted within the United States of two or more felonies or of five or more misdemeanors or of one felony and three or more misdemeanors, and who is reasonably certain if free from enforced restraint to commit further criminal offenses, and whose continuance at large is seriously detrimental to the good order of society, is hereby declared to be an habitual criminal.

Sec. B. "The continuance of criminal habits and practices in such manner as shall constitute the person an habitual criminal, as defined in Section "A," is hereby declared to be a felony and may be prosecuted in the same manner as are other felonies, and any person convicted of being an habitual criminal shall be sentenced to permanent detention in the state prison of the State of Wisconsin at Waupun, Wisconsin, or in such other institutions as may be provided therefor. If any person complained against as being an habitual criminal shall have had a fixed place of abode within this state throughout the year next before his last previous conviction, the county of such residence shall be the place of trial; but if such person have no fixed place of abode within this state, the prosecution may be maintained in any county of this state. The provisions of law respecting change of venue in criminal cases shall apply to such prosecution.

Sec. C. "All persons in detention, after conviction of being habitual criminals, shall be subject to parole by the State Board of Control, but shall become eligible to such parole only upon earning the right thereto by meritorious conduct in compliance with such rules as may be prescribed by said board. In the event that after a parole has been granted the person shall by meritorious conduct become in the opinion of the State Board of Control, able to maintain himself as a law-abiding person out of restraint, said board, with the approval of the governor, shall have power to finally discharge such person from detention and custody."

This law would seem to meet a vital need.

Finally, may I say that the great need in our society, as in most such organizations, is for action. We meet year after year and talk. Talk is cheap. It amounts to little unless it is translated into action. Action can, however, be secured only through efficient committees. Provision should be made in our society for a number of committees, including particularly a legislative committee, charged with various specific duties. This practice was established and pursued to advantage in the early history of the society. I recommend that it be revived.

DISCUSSION

HERBERT HARLEY¹

Among the many excellent ideas embodied in President Hale's broad survey of the problems of criminology there is one which I would italicize. It is the distinction which he clearly draws between the two and diverse historic functions of the court in the role which it plays in the administration of criminal law. The first function is the determination of fact—whether an offense has been committed and whether the accused is the guilty person. This is all retrospective in character. The second function is prophetic. It involves a choice of sentence which will, in the opinion of the court, best avail to protect society against a repetition of the offense.

I submit that though a court be admirably organized and equipped to accomplish the first function, the second will nevertheless be one fraught with great uncertainty and danger.

The law provides a considerable range of choice for the judge in meting out sentences. The propriety of suspending sentence in many instances is quite universally recognized. If there be a fine or imprisonment the law usually leaves the judge considerable latitude in order that he may fix the punishment, not to fit the crime, but to fit the criminal. The development of the probation idea enlarges the scope and the responsibility of the judge and increases the difficulty of his choice and the possibility of mistake.

The question is—how will this particular human complex react to various kinds of punishment? No question could be more difficult than this. In recognition of its insuperable difficulty we have evolved the indeterminate sentence and the parole system. These tend to relieve judges of a function which they can never be certain of performing successfully by placing the duty on the shoulders of those who can observe from day to day over long periods of time the actual effect on the prisoner of his confinement, and so can make a decision finally with respect to the extent of his imprisonment which is not a guess or a prophecy, but a conclusion based upon substantial knowledge.

I believe that something will be gained in the pioneer science of criminology when it is generally accepted that courts, however well qualified to ascertain guilt, can never do more than guess as to the

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extent of punishment required to attain the best results. Let this latter function be taken over more and more by the administrative agents of the executive department of the state, so that they will more clearly realize a responsibility for this vastly important phase of the situation, and will organize more thoroughly and adopt all the aids to be rendered by the science of psychopathology. We have gone a considerable distance already along this line, but there is need for going further and with a more definite understanding of the division of labor between courts and prison officials.

I am not prepared to endorse so unreservedly as has our president the proposal to create the office of public defender, though entirely willing to concede the facts which he has presented. It is quite true, as he says, that "The public prosecutor is sworn to uphold the law, not to convict and hound the accused; but a short-sighted public measures the efficiency of the prosecutor by the number of notches on the stock of his official gun. His continuance in office depends upon his efficiency determined by this measure." This is unfortunately true in every state in the Union.

But is this necessary? Has anybody ever made a study of the office of prosecutor? I have never heard of any serious inquiry into this subject. Considered theoretically, can anything be more absurd than our traditional handling of this highly important matter of prosecuting? The laws are state laws; the work of enforcing them is a state function. But we have no state organization of prosecutors. Instead we have a thorough decentralization of this function. We make the office as thoroughly political as any office can be. The office calls for legal skill and knowledge of a high order; it calls for maturity of thought and experience; it requires long tenure and reasonable recompense. But the office as constituted has a minimum of these qualifications. No man can expect to hold the office of prosecutor long enough to become really effective, to acquire skill and experience and to pursue a policy long enough to prove its worth. Even if political conditions favored long tenure the low salary and unpleasant features of the work would make for frequent shifts.

Ordinarily the office of prosecutor is the one aspired to by the young and ambitious lawyer who needs experience and sees a chance to get it at the expense of the community. Having got it, he cannot quit the office quickly enough. In getting elected he necessarily becomes a party spokesman. He is a chief reliance of his party in its local campaigning. At the time he takes his first oath of office he must look forward to his re-election at an early date. He must take

into consideration all the time the voting strength of the forces of crime and disorder.

This does not mean that our prosecutors are corrupted. On the contrary, they are required to pile up convictions as proof that they are not in league with evil. And the greatest incentive of all, the acquiring of a professional reputation, is dependent upon working unreservedly for convictions.

The lack of state organization makes the administration of this office extremely personal and local. Only in slight measure is the office linked up with the state office of attorney-general. There is no broad state policy with respect to prosecutions. There is no interdependence as between the separate units in this field.

It is really wonderful that we get results as good as we do. I attribute our relative success to the fact that the office is in the hands of men with their professional reputation at stake, and to the considerable influence exerted upon the prosecutor by judges who possess the wider view and longer experience.

In this condition of defective organization the best we can expect of the prosecutor is loyalty and it is no wonder that this loyalty to prosecution becomes over-developed.

But I do not see that the creation of another office is indicated. Adding wheels and gears to a defective machine may make it run a little faster, but the machine is still defective. I do not understand that it is theoretically incompatible with the office of public prosecutor that that official should take care of the interests of the accused. Only by so taking care of the accused person's interest can the prosecutor discharge his full and real duty to the public.

If we differentiate these obligations and have one staff of officials to prosecute to the utmost and another to resist prosecution to the utmost—and that would seem in brief to be the logical outcome of the public defender proposal, for this official would also have a gun-stock to be notched—we are simply increasing the pressure upon the prosecutor to prosecute ruthlessly and with no sense of a broader responsibility, and that is the defect assigned as a reason for the proposed change.

I do not believe in making the machinery of criminal law more complex until we have first tried unity and co-ordination. Let us keep in mind the eternal need for singleness of responsibility. I would prefer to see our state, now so far in the lead in many political reforms, undertake to correct the weak points in its system of prosecution, and this appears to me to be really easier than to multiply offices. I would like to see every local prosecutor serving as the

appointed deputy of an attorney-general who is appointed by the governor. I would like to see prosecutors chosen from among the older members of the bar, men who have a long perspective in social relations. I would not care whether they were forensic orators or not. I would provide them with sufficient salary and the prospect of tenure during good behavior.

All this can be done with a substantial saving in salaries, because a prosecutor devoting all of his time to the work could serve more than one county. Such officials as I have in mind would know all about crime in their particular localities. They would keep statistics and make frequent reports to the state central office, which would publish annual reports of the greatest value to government. Such of them as possessed unusual forensic ability could specialize in difficult trials and be sent from one county to another to assist the local prosecutor during terms of court.

President Hale has very sensibly urged more intensive effort on the part of this institute. I would endorse this advice and suggest that forthwith a scheme for organizing the prosecuting force of the state into a wieldy and expert body, with an undivided responsibility, be formulated in readiness for a constitutional convention. A great deal of any such unified plan could be put into force by legislation in case there should be no convention. If the time is too brief to convince the public of this need before the next convention shall have completed its work, at least we could hope for constitutional provisions which would leave the door open for remedial legislation in the future.

There is one other present opportunity for accomplishing reform of the greatest import which lays an obligation upon this society. I refer to the grand jury. In twenty-three states the grand jury has been entirely abolished or has been restricted to its proper role of inquisition. As a means for bringing ordinary criminals to trial it is entirely unsuited to modern conditions.

The most valid charge against our judicial system in respect to criminal law procedure is the delay which exists between the first complaint and the day of trial. There should be no procedural step which does not contribute affirmatively to the results sought. We are now obliged to resort to grand jury procedure in every case of felony. In ninety-nine out of one hundred cases it is a perfectly senseless and useless procedure. The accused can never derive any deserved benefit from the grand jury. If his defense is valid the grand jury affords him no opportunity to save his reputation, for he is not permitted to appear before it or to present his evidence. It is wholly *ex parte*.

But if, on the other hand, the accused is guilty, he derives in many instances a great deal of assistance from the grand jury. Every successive step affords him some possible loophole. Every step postpones retribution. Every step helps to wear out the state's witnesses, to make prosecutions more difficult, more involved and technical, more costly and less certain.

The grand jury can do one kind of work admirably. When there is a public scandal and need for *ex parte* investigations with no continuing responsibility on the part of the investigators, the grand jury, capably assisted by the prosecutor and the trial court, can accomplish something. But in the ordinary run of felony cases it cannot possibly contribute anything affirmatively to the interests either of state or accused, but may seriously add to the difficulty of administering justice.

The farce of the grand jury investigation is thoroughly exposed by the growing reliance upon the preliminary examination before a judicial officer. Arrest is based upon a sworn complaint authorized by the prosecutor or the court. Then comes the public hearing to determine whether the offense has been committed and whether there is probable cause for believing that the accused is guilty. If there is a good defense it can be submitted here and the accused gets the full benefit of it. Great weight attaches to the finding of the magistrate if in favor of the accused. If probable guilt is found the next step should be trial as speedily as possible in the criminal court.

But under the curse of the present grand jury system we have a hurdle interposed between examination and trial. Speaking for Cook County I can say on the authority of undisputed statistics that the grand jury prolongs criminal procedure, wears out the state's witnesses, offers practical and technical loopholes for the accused, and is in every way a profound detriment to the administration of justice.

This is one of the things which must be altered by a constitutional convention. It narrowly escaped reform in the convention held forty-five years ago. The need now is one hundredfold greater than then.

This opportunity would seem to suggest an assured field for effort in the coming months on the part of the institute.

PENAL INSTITUTION HOSPITAL TREATMENT OF VENEREAL DISEASES¹

AMOS O. SQUIRE²

The care and treatment of venereal diseases is of the greatest importance in the work of the medical department of a penal institution. When one takes into consideration that in the year ending August 1, 1917, we received at Sing Sing Prison 927 inmates; we found 20% of them having a positive Wasserman reaction, made up as follows:

Out of 186 positive reactions we found

12 % — 4 plus	1½% — 3 plus
1¼% — 2 plus	5 % — 1 plus

a total of about 20%.

As to the Wasserman reaction, it does not appear generally until from the fifteenth to the twenty-fifth day following the appearance of the chancre. In secondary syphilis the percentage of positive reactions was about 95%; in tertiary syphilis, 75%; in latent syphilis, 50%, making on the whole about 85% of the cases of active syphilis giving positive reactions.

The diagnostic value of the reaction: The Wasserman reaction is not absolutely specific for syphilis, for it has been obtained in other diseases, such as sleeping sickness, malaria, leprosy and scarlet fever, but from a clinical standpoint in a penal institution it can be regarded for all practical purposes as specific for syphilis.

It has been our practice for some time past to make a complete physical examination of all inmates upon their entering the prison. This includes urinalysis, Wasserman test, and, if indications warrant it, a sputum test. All venereal cases are at once isolated, confined in one company, have separate tables at which they eat, and separate places to sleep and work. We do not permit at any time during an inmate's term his working in the mess, kitchen, bake or barber shop if he is afflicted with venereal diseases.

We have for the past two years considered these sexual diseases as a hospital problem, and they have received our careful attention as a duty we owe to the inmate and for the protection of society when

¹Read before the Prison Physician Section of the American Prison Association, New Orleans, November 19, 1917.

²Prison Physician, Sing Sing Prison, N. Y.

these men leave our institution. In an institution like ours at Sing Sing it is quite an easy matter to control your cases; you are able to treat them and keep them under constant observation and at different intervals check up your results.

Speaking of syphilis, there are several ways in which a penal institution can contribute to the management of this disease. First, a thorough examination of the inmate when he enters the prison. (As I stated above, about 20% of our prison population at Sing Sing respond to a positive Wasserman reaction.) Through the courtesy of the New York State Department of Health, we send all our specimens to them for examination. I believe that it would be possible for other prisons to make the same arrangement with their State Department of Health. It would be better if we had a serologist in our large institutions for our hospital laboratories. As soon as syphilis is recognized in the new inmate, he is placed in a separate company, thereby protecting the staff and the other inmates from infection.

At Sing Sing Prison we have a visiting aurist and an urologist, who co-operate with our staff in making a study of our cases. We are therefore better able to judge of our patients' resistance and reactions to our treatment. All treatments and observations are carefully charted, and in cases which show cerebral disturbances we do a lumbar puncture.

ISOLATION

Syphilis is a contagious disease, and as such should be isolated, and as a large percentage of our inmates are ignorant of its contagious character isolation is important. All institutions should have a section of their hospital set apart for the care of these cases. When syphilis is in the active stage, they should be isolated in separate wards, thereby controlling your patients better. I cannot urge this too strongly, as a careless and a haphazard control lessens the effectiveness of your treatment. The patient must feel that you are interested in his welfare, and when you obtain his confidence you will be able to direct his course toward a cure. Syphilis is less contagious than typhoid fever or tuberculosis, and it exists as a problem only in its primary and secondary stages, and as we take a Wasserman test on all new admissions within three days of their arrival, we do not get many unrecognized cases, and this in itself is the greatest protection from contagion.

TREATMENT

Syphilis cannot be cured with one injection of any one of the well-known arsenal preparations now on the market, and the physician who states definitely as to just how many injections are necessary is merely guessing, as there is no standard to go by in a given case of syphilis. It is a good plan to destroy the primary lesion, and this should be done whenever possible. Unless mercury disagrees with, or the patient is exceedingly susceptible to its physiological effects, we use it continuously during the secondary stage. We usually give biniodide grain $1/24$, three times a day, increasing one pill until symptoms of pyralism appear; then we reduce the dose.

It has also been our practice to give inunctions of mercurial ointment, in some cases using about 1 drachm a day for five days, and then omitting two days. This method produces excellent results. While we are giving these inunctions we use potassium iodide internally, which seems to be a great advantage. Unless untoward symptoms arise, we give a series of from sixty to seventy inunctions.

As to the hypodermic use of mercury in syphilis we have tried salicylate of mercury, administering it in doses of one grain once a week, all injections being made in the deep muscles of the gluteal region. So far, with this method of treatment, our results have not been satisfactory. We have found that in a series of ten cases the results of the Wasserman findings were uninfluenced by the intermuscular injections.

As shown by the figures collected at Sing Sing during the past year, diarsenol, salvarsan and neosalvarsan offer the greatest possibilities in the treatment of syphilis, and the method of administering these has been by intravenous injections of a dilute alkaline solution. We have diluted our solutions from 25 cc. to 200 cc. solution. We found that in the majority of cases we had to give five or six injections, dose at each injection being 0.6 gram each.

As to the method of preparing the solution, or the method of injecting it, it is unnecessary to discuss in this paper. I am persuaded to believe that no physician or surgeon would presume to use a solution made under conditions other than those which will assure a perfect technic in its preparation. One point I wish to particularly impress upon you is the importance of the purity of the water which is to be used. Commercial distilled water is absolutely worthless and has been known to cause grave reactions, owing probably to faulty apparatus, careless attention or improper knowledge of the proper

manner of sterilizing containers. The water used should be freshly distilled—never more than two days old. I also recommend that the prepared solutions be passed through a small piece of sterile cotton just before using. There has been but very little ill-effects accompanying these injections. Some extremely nervous patients complained of faintness, and others of smarting pains at the point of injection; this was probably due to a slightly injured vein. We examine the urine of all patients for albumin and casts to determine the condition of the kidney before administering the intravenous injection, and if we find any evidence of renal trouble we use extreme caution.

We have never found it necessary to put a patient to bed after the treatment. Usually we give him a dose of Epsom salts to remove the drug as it is eliminated from the system.

As to contra-indications. When one considers the millions of doses of salvarsan, neosalvarsan and diarsenol which have been used, and the relatively small number where ill-effects have been obtained, no one need be afraid to use it except in severe, uncompensated heart lesions, emphysema, aortic aneurysm, coronary sclerosis, Bright's Disease, and advanced diseases of the brain and spinal cord. The two potent remedies in the treatment of syphilis are mercury and the arsenicals—salvarsan and its allies.

The following table will show the results of different treatments administered at Sing Sing Prison on patients having a four plus Wasserman reaction and the conditions found six months after the treatment:

Number Treated.	Cured	Improved	Unimproved
Patients receiving 6 tubes each of 0.6 gram. diarsenol—			
19	15 or 79%	4 or 21%	0 or 0%
Patients receiving 70 mercurial rubs and two tubes each 0.6 gram. diarsenol—			
40	26 or 65%	12 or 30%	2 or 5%
Patients receiving 50 rubs and 3 tubes each of 0.6 gram. diarsenol—			
14	12 or 85%	2 or 15%	0 or 0%
Patients treated with salvarsan, 0.6 gram., 5 tubes each—			
8	4 or 50%	3 or 37½%	1 or 12½%
Patients treated with neosalvarsan, 0.9 gram. each, 5 tubes—			
4	3 or 75%	1 or 25%	0 or 0%
Patients treated with venarsen, 5 tubes each—			
9	0 or 0%	0 or 0%	9 or 100%
Patients treated by intra-muscular injections of salicylate of mercury, 1-grain each dose—			
10	0 or 0%	1 or 10%	9 or 90%
Patients treated by mercurial inunctions—			
117	13 or 11%	37 or 31%	67 or 58%

COMPARATIVE TABLE

Showing Cases Treated at Sing Sing Prison with Diarsenal, Salvarsan, Neosalvarsan and Venarsen, and the Results Found After Six Months of Treatment, the Patients so Treated Having a Four-Plus Wasserman Reaction

Medication	Patients	Rubs	Cured	Imp.	Not Imp.
Diarsenol .....6—0.6 Amp.	19	0	15	4	0
Diarsenol .....2—0.6 Amp.	40	70	26	12	2
Diarsenol .....3—0.6 Amp.	14	50	12	2	0
Salvarsan .....5—0.6 Amp.	8	0	4	3	1
Neosalvarsan ....5—0.9 Amp.	4	0	3	1	0
Venarsen .....5—0.0 Amp.	9	0	0	0	9
Mercury salicylate.1 Grain	10	0	0	1	9
Mercury inunctions	117	43 Ea.	13	37	67

NOTE.—The 117 patients treated with mercurial inunctions received a total of 5,001 inunctions.

CARE AND TREATMENT OF GONORRHEA

In the year ending July 31, 1917, out of 927 inmates admitted to prison we made 417 urethral smears, and found 129 of them to be positive. Our acute urethritis cases were treated in the usual manner—internal and local medications, together with urethral injections. But it is the chronic urethritis, the class of cases most common in prison, I desire to discuss more fully. The general treatment consists of the avoidance of all excesses; a simple diet and salol given internally in 10 to 15 grain doses three times a day. If the urethritis is limited to the anterior urethra, we irrigate with permanganate of potassium (1-6000). During the past year we have tried with considerable success intravenous and intraprostatic injections of methyl-phenol and normal-phenol serum, as suggested by Dr. Cano and our urologist, Dr. Terry M. Townsend of New York City, who is in charge of the Genito-Urinary Clinic at Sing Sing Prison. He summarizes his experiences as follows:

"The treatment of gonorrhea by intravenous injections of this medicament until the disease reaches its declining stage prevents complications; (2) pain, discomfort and all other subjective and objective symptoms usually disappear after the fourth or fifth injection, and definite clinical and bacteriological cures are effected in from thirty to forty days; (3) ten injections are usually sufficient when the infection is attacked at its onset; (4) gonorrhea, when complicated by primary or secondary syphilis, successfully responds to the treatment if additional anti-syphilitic medication is employed;

(5) local complications, such as epididymitis, buboes, abscesses, etc., together with systemic manifestations such as toxemia and the paragonocoeal lesions, disappear more rapidly with this form of treatment than with any other, and surgical interference is seldom necessary.

"The intravenous injection of 10 cc. of the methyl-phenol serum, or an intraprostatic serum, is nontoxic—in no manner does it jeopardize the recipient's life or produce any deleterious effects. Its role is that of an antiseptic, and its effects are due to the action of phenol on the gonococcus and its toxins at the site of infection (locally) and within the body (systemically) through the blood stream. The presence of methylene blue in this product is of extreme importance; this substance acts as a protector to prevent the phenol from exerting its direct action on the red blood corpuscles. Methyl-phenol serum is not a panacea, nor can it work miracles; hence judicious use, with full understanding of its action, is essential to success.

"The frequency of gonorrheal prostatitis is so great that it can be looked upon as a part and parcel of every gonorrheal infection. As soon as the infection is recognized we inject normal-phenol serum into the prostate gland. The contra-indications to intravenous and intraprostatic injections are: (1) Advanced nephritis; (2) extensive organic cardiac lesions, and (3) auto-intoxications."

The technique of intraprostatic injections is simple. The patient is placed in the lithotomy position and the perineal triangle is shaved and iodized. The middle finger of the left hand, appropriately clothed in a rubber covering, is inserted into the rectum and hooked above the gland. The scrotum and testicles are retracted above the pubic arch; the needle, which should be about 7.5 c.m. long and of 19 m.m. gauge, is held firmly in the right hand and inserted into the perineal body in the raphe about 2 c.m. above the anus. This avoids puncture of the rectum or bulb. The location of the point of the needle can be determined by the rectal palpitating finger, and this is guided into the central portion of one lobe, or into the most prominent elevation of the prostatic enlargement. We have seen abscesses thus tapped spout forth free pus. If free pus exudes it should be permitted to drain away before injecting the serum. If an appreciable amount of blood flows through the needle, the position of the point should be altered to avoid direct injection into the circulation. Depots of serum should be deposited throughout each prostatic lobe by slight withdrawal and reinsertion of the needle into different areas of prostatic tissue after injecting in each four or five c.c. Care should

be taken not to change the general horizontal plane of direction. The amount of serum adequate to produce physiological effects varies from 10 to 15 c.c. per lobe. Some cases demand more. The largest amount that we have injected at Sing Sing Prison in a single lobe was 50 c.c. After one lobe has been injected it is necessary to withdraw the needle only partially until it is free from the capsule, and then insert it into the opposite lobe without piercing the perineum a second time.

In conclusion, Dr. Townsend states: "Methyl-phenol serum may be repeatedly injected intravenously in doses of 10 c.c. into adults at intervals of forty-eight hours without danger or detriment to life or health; (2) its use has a tendency to prevent complications by killing or rendering inert the invading gonococcus at the site of residence; (3) for the same reason and because of the neutralization of gonotoxins it shortens the life of gonorrhea and alters a vicious into a benign infection; (4) intraprostatic injections of normal-phenol serum are harmless when correctly performed, and shortens the time required to cure chronic gonorrheal prostatitis; (5) the treatment of gonorrhea by Cano's theory of intravenous injections of methyl-phenol serum and intraprostatic injections of normal-phenol serum is firmly based upon chemico-biological facts and accepted authoritative theories, and bears the same relation to gonorrhea that intravenous injections of arsenicals bear to syphilis."

EPILEPSY AS SEEN IN THE LABORATORY OF A PENAL INSTITUTION¹

JOHN R. HARDING²

In the preparation of this brief outline the writer has confined himself to the use of material studied in the laboratory of the Elmira Reformatory during the past twelve months.

The psychological laboratory emphasizes the personal side of the criminal. It grades his mentality through the use of intelligence tests and thus determines his degree of efficiency. It also tabulates the *kind*, or quality, of his mental departures and so affords a valuable cross-reference study of the case. Furthermore, it penetrates into the sub-conscious and analyzes the character and personality of the individual at close range.

This method has given us a new and interesting view of the "epilepsies." Students of this mysterious disease type have long quibbled over its actual causation. Some of them still adhere tenaciously to the theory that organic brain changes are always present, but cite no constant lesion to substantiate their claim; others believe that the presence of a toxin in the blood is the actual cause of the trouble, and Reed has discovered an organism in the blood of epileptics which he claims is not found in that of other individuals and to which he attributes specific qualities. Another contingent insists that we are dealing with a neurosis closely simulating the "hysterias." An enthusiastic advocate of this particular hypothesis has recently declared that there are no epilepsies, but that we are dealing with a distinct type of nervous susceptibility, and that the manifestations by which we diagnose epilepsy are only the natural resultants of irritation on this particular type of nervous system. Clark of the Freudian School declares with startling audacity that epilepsy is due to the unconscious striving for expression of certain arrested and immature sex emotions.

But in spite of the long and diligent search for a specific lesion, and the many hypotheses offered, none has yet been found. There are no recognized pathognomonic signs of epilepsy today. Less than one-half of Clark's twenty-five selected cases of true epilepsy revealed

¹Read at the Annual Convention of the American Prison Association, New Orleans, November 19, 1917.

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any evidence of gross or microscopic pathology. As Spratling has so aptly said, "Epilepsy is the most protean, variable and uncertain of all maladies." It takes possession of the personality and stamps it with its own image; it interrupts consciousness, convulses the body, saps the intelligence and perverts the will. Its victim is a source of fear and shame to his relatives, and usually an outcast from society. What is this monster malady that has defied the best diagnostic efforts of the profession for twenty-five centuries, and is still untamed? And why have we thus failed, unless it is because we have looked too steadily at the convulsive phenomena while passing over the personal make-up of the individual and ignoring the psychological meaning of his symptoms?

The writer of this paper believes with Gowers and many other able authorities on the subject that epileptic phenomena are the direct outcome of some physical or psychic irritant acting upon an unstable nervous system, which in turn is susceptible to convulsive manifestations; that this susceptibility resides largely in the cells of the motor and intellectual areas of the cerebral cortex; also, that the disease is always the result of a vicious heredity. As Spratling has said, "Heredity is the supreme agency to which the disease could possibly be ascribed."

Thus it is that the laboratory, through its study of the personality and the life history of the individual, is uncovering the heretofore hidden character of this strange disease complex. In fact, the combined forces of biology and psychology have triumphed where those of pathology had so long striven in vain.

CROSS-REFERENCE SUMMARY OF FORTY-FOUR EPILEPTIC DIAGNOSES MADE AT THE
ELMIRA REFORMATORY, 1916-1917.

Epileptic Types		Grades Sub- normal	of Efficiency Segre- gable	Total
Motor Seizures—				
Major Motor Epilepsy.....	..	3		
Minor Motor Epilepsy.....	7	3		
	—	—	13, or	29%
Sensory Seizures—				
True Sensory Epilepsy.....	9	..		
Masked Sensory Epilepsy.....	10	3		
	—	—	22, or	50%
Psychic Seizures—				
Psychic Accessions	1	..		
Psychic Equivalents	4	4		
	—	—	9, or	21%
			44, or	100%

The above summary was compiled from a study of 400 consecutive cases recently made at the Elmira Reformatory. As will be readily seen, these 44 cases represent 11% of the entire number examined. As previously noted, psychoanalysis reveals the true nature of many formerly obscure and poorly understood examples of epilepsy, and it is evident that our classification must now be extended so as to include these out-of-the-way members of this family group.

The cross-section used here is a simplified modification of the Fischbein classification of epilepsy, based upon its clinical symptomatology. The time-honored division into major, or greater, and minor, or lesser, epilepsy, must go, since these terms were in reality descriptive of appearances rather than of actual conditions. Thorough investigation has convinced us with Esquirol that even a "transient epileptic vertigo is often more damaging to the intellect than the far more violent and formidable grand mal seizures."

The above classification recognizes three main types of seizure, namely, Motor, Sensory, and Psychic seizures. The Motor type is subdivided into a Major and a Minor form, according to the amount of muscular spasm.

Major Motor Epilepsy is the classic and full-fledged manifestation of the disease generally recognized as the common "epileptic fit." The seizure is usually of short duration, but leaves a varying display of sensory or psychic symptoms in its wake.

Minor Motor Epilepsy includes "running" epilepsy, also the so-called Jacksonian type, and differs from the Major form in degree rather than in kind.

The Sensory seizures are conveniently divided into either the true or the masked forms.

True Sensory Epilepsy, including much of the common petit mal, is also of sudden onset and short duration. It displays little or no spasm and is attended by a periodic and transitory lapse of consciousness without falling.

Masked Sensory Epilepsy is characterized more particularly by the presence of modified sensory symptoms, such as vertigo, headache, or precordial distress. The consciousness is not always fully eclipsed in these cases, but the symptoms are usually more prolonged and deep-seated than in the preceding forms.

The Psychic seizures, as implied by the title, are characterized by the appearance of strange and sudden mental phenomena of epileptic origin. These episodes may appear before or after a regular motor seizure, or as equivalents to the latter.

Psychic Accessions express themselves as mixed hallucinations, uncontrollable impulses, emotional variations, etc. The epileptic insanities naturally come under this type, also many of the criminal obsessions among epileptics.

Psychic Equivalents include the more passive and deep-seated mental phenomena of epileptic origin, such as dream states, dual personalities, and ambulatory automatisms. This form generally alternates with other types of the disease, and is, therefore, more of a supplementary type.

But, as previously noted, the epilepsies are strangely variable and uncertain in their manifestations. They follow no set rules and frequently come to the surface in new and unexpected combinations.

While our classification must necessarily deal with the attack itself, let us bear in mind that there are other kinds of convulsions not unlike those of the motor epilepsies, also that the sensory and psychic epilepsies may be closely simulated by some of the benign neuroses. Our diagnosis, then, can best be made from a close study of the individual himself during the interval between attacks. In fact, the presence of the so-called "epileptic character" must ever be our diagnostic guide.

The epileptic is chronically nervous. The keynote to his character is emotional irritability. His varying moods change most unexpectedly, and he is actuated by quick, unreasoning impulse in much that he does. The epileptic shows a woeful disregard for consequences. He lacks foresight and planning ability, and pursues his irregular activities openly and boldly. He also has a violent, uncontrollable temper, and is usually jealous, suspicious and fault-finding in his dealings with others. Often he develops hatred, and assumes a persecutory attitude towards those with whom he is associated. In some cases fear is a prominent symptom, especially just preceding the attack. Some are cunning and treacherous, and inclined to trump up false charges against innocent people. These ideas against family and friends may temporarily pass into real delusions and thus lead to criminal acts.

All epileptics are egotistic and self-centered. Sometimes this takes the form of self-pity and of a wholesale distrust of others, and thus leads to the "shut-in" personality; these are the moody and melancholy cases which keep themselves in the background, and try to cover their symptoms. Other egocentrics are of a selfish, unethical type, who perpetually ignore and trample on the rights and feelings of others.

The volitional sphere of epileptics often suffers radical changes. While obstinate and uncompromising towards others, they are often strangely weak-willed and suggestible. Morally these individuals are apt to be spineless or perverted. They lack inhibitory force, and are frequently given to gluttony and debauchery. Many of them are over-sexed, especially during the heat of emotional stress just preceding an attack. In general, as the higher mental attributes become dulled or effaced the animal instincts rise to the ascendancy. We are here reminded of Lombroso's unique description of the epileptic personality, and of his strong contention that all crime is in some way related to the epilepsies. While recognizing a frequent relationship between crime and epilepsy the writer of this paper believes that epilepsy is only one of several types of criminal potentiality.

As a rule, the epileptic is ashamed of his malady and tries to conceal it. From this fact we have occasionally been enabled to distinguish atypical cases of epilepsy from the hysterics. This tendency towards subterfuge may also account for some of the unrecognized cases in our institutions.

The epileptic psyche is always a restless and changeable entity. While the character defects just enumerated are usually intensified for varying periods immediately before or after the seizure, an unstable temperament is always in evidence. These individuals are essentially degenerate, and unable to adapt themselves to the requirements of a normal, social life. The defect is primal and in a broad sense due to a perversion of the varying attributes of the psyche itself, and is not to be confounded with the arrests of intellectual development found in the feeble-minded, or with the deterioration due to the destructive influence of the attack itself.

The technique of our laboratory examinations has included (1) a careful physical examination, together with a Wasserman blood test; (2) a general intelligence rating according to the Binet-Simon measuring scale, in conjunction with some of the Healy mental tests; (3) a psychological examination; (4) a careful study of the inmate's personal and ancestral histories.

The leading physical defects noted were irritable, rapid hearts, nutritional disorders, and wide variations in the reflexes. Almost without exception those examined suffered more or less from constipation. The sexual organs were often oversized, and pigmented from masturbation and venery.

As pointed out by Goddard, those who are either primarily epileptic or acquire the disease in early life may deteriorate rather rap-

idly. They answer part of the test questions for different years correctly, but miss some questions in all of the year tests, thus showing a scattering of the intellectual defects. This would indicate that epilepsy involves certain attributes of the intellect, while leaving others more or less intact. Most cases give varying responses to the same tests at different sittings. The morons and psychopaths of low grade who acquire the milder forms of epilepsy apparently do not deteriorate rapidly. They also respond more uniformly to the intelligence tests up to the limit of their intellectual development.

Biologically the epileptic may be looked upon as a monstrosity in which the variations and defects of several generations of ancestors have combined to produce a strange and perverted type of individual. It does not often happen that the epileptic is the son of an epileptic; but his family tree has invariably produced many other atypical offshoots, and all too frequently the parental blood has been vitiated by the presence of alcoholic, syphilitic or tuberculous poisons.

This outline would scarcely be complete without a differential reference to the so-called "benign epilepsies." These cases often closely simulate the real sensory seizures, but seldom suffer from motor symptoms aside from palpitation or a sense of a general weakness; neither do they display the epileptic temperament, nor show deterioration. These episodes occur in a certain class of neuropathic degenerates, who become dizzy or confused when angry or embarrassed, or when trying to concentrate the gaze or attention. Roaring sensations and a hallucinatory play of bright colors are frequently experienced during these attacks, also more or less cerebral congestion and subsequent headaches and apathy for varying lengths of time. These individuals are found more particularly among the lower grades of intelligence, and are to be differentiated from true epileptics.

REITERATION

(1) Epilepsy is a distinct neurosis, characterized by the twin manifestation of impaired consciousness and impaired motor co-ordination, combined with a perverted personality and excited by a specific irritation.

(2) The psychological laboratory, through its study of the character and personality of the individual, in conjunction with a careful intelligence grading, has shed a new light upon the epilepsies.

(3) After twenty-five centuries of diligent search for an etiological lesion, we are now convinced that there are no strictly pathog-

- nomonic signs of epilepsy, but that the seizure is due to the specific action of some irritant upon a susceptible nervous system.

(4) That for practical laboratory purposes we may conveniently classify according to clinical symptoms instead of the outward appearance of the seizure.

(5) The so-called epileptic character should be our center of the interest and our diagnostic guide-post in every case.

(6) The epileptic temperament is always unsocial and potentially criminal.

(7) Biologic and psychologic methods offer the only practical approach to a comprehensive understanding of the disease.

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER AND WILLIAM G. HALE

APPEAL AND ERROR.

People v. Mooney, Calif. 171 Pac. 690. *Question for jury.*

In homicide case it cannot be contended on appeal that a witness could not have seen certain happenings from where he was standing, as the credibility of the witness was for the jury.

No matter how inconsistent the testimony of a witness, or of two witnesses, for the state in a homicide case, a reviewing court cannot reject the testimony; the jury having the right to choose and act on the part it believes.

The tendency of modern decisions is to admit any evidence in a criminal case which may have tendency to illustrate or throw any light on the transaction in controversy, leaving its weight to the jury.

If it was error to incidentally admit in evidence a pistol found in defendant's room in a homicide case, the crime having been committed with a bomb, it could not be prejudicial.

ARREST.

Wiley v. State, Ariz. 170 Pac. 869. *Reasonable suspicion of felony.*

Where peace officers were proceeding to an amusement park at midnight in an automobile on information that a woman had been beaten and robbed, and perceived another automobile in front of them, both cars having a speed of about 25 miles an hour, and their mufflers being open so that the occupants of the car ahead could not hear the officers' summons to stop, the officers did not have reasonable and probable cause to suspect the commission of felony by the occupants of the other car, justifying them in arresting without warrant, or attempting to do so by firing at the car, one of whose occupants they killed.

CONSPIRACY.

U. S. v. Bathgate et al., 38 Sup. Ct. Repr. 269. *Oppression of personal rights.*

Criminal Code, sec. 19, punishing conspiracies to oppress the free exercise of rights secured by the federal constitution or laws, etc., is inapplicable to a conspiracy to bribe voters at an election for presidential electors and members of congress.

EXTRADITION.

Carpenter v. Lord, Ore. 171 Pac. 577. *Extradition of person "in custody" under Oregon statute.*

L. O. L., sec. 1874, providing that one in custody on a criminal charge cannot be delivered up to another state until legally discharged, is mandatory, and the governor has no discretion, in view of L. O. L., sec. 756, making judgments conclusive as to the legal condition of any person.

A convicted person, on parole under a judgment, is "in custody," within L. O. L., sec. 1874, providing that one in custody upon conviction of crime cannot be extradited.

McCamant and Moore, JJ., dissenting.

FALSE PRETENSES.

Clarke v. People, Colo. 171 Pac. 69. *Reliance on pretense.*

On a trial for false pretense the court charged that, if defendant falsely made alleged pretenses without at the time intending B to act thereon in purchasing stock, but afterwards sold stock to B with intent and design that B should rely thereon and be thereby influenced to buy the stock, "whether consciously or sub-consciously so induced on the part of B," then the jury should treat the former pretense as by adoption renewed upon such deal by defendant. *Held*, that this instruction was justified, though not required, by B's testimony that he believed the representations previously made by defendant and acted on them, and would not have but that he did not know that he turned over in his mind any specific statement at the time of the purchase, except, perhaps, in a sub-conscious manner.

GAMING.

State v. Googin, Me. 102 Atl. 970. *"Device of Chance."*

A slot machine which gives five cents worth of gum for each nickel dropped therein, but also gives trade checks when indicated, is a "device of chance" within Rev. St. 1916, c. 130, sec. 18, although the amount of the checks to be received is indicated before each play, and although the trade checks are supposed to be profit-sharing payments on a fixed percentage basis.

HOMICIDE.

State v. Caterni, Mont. 171 Pac. 284. *Intent where wrong person is killed.*

Killing one person undesignedly in the attempt to murder another, although not a guiltless homicide, is not murder in the first degree; the deliberate, pre-meditated design specifically to kill the person who was killed or to kill him as one of a crowd being lacking.

INDICTMENT.

State v. Perello, Kans. 171 Pac. 630. *Necessity of averment of exception in penal statute.*

In an information charging the violation of section 1 of the "Bone-Dry Law" (Laws 1917, c. 215), making it unlawful "for any person to keep or have in his possession any intoxicating liquors . . . or to give away or furnish intoxicating liquors to another, except druggists or registered pharmacists as hereinafter provided," it is not necessary to allege that the defendant was not a druggist or registered pharmacist.

A negative averment of the matter of an exception or proviso in a penal statute is not necessary in an information, unless such matter enters into and becomes a material part of the description of the offense.

West, J., dissenting.

INTOXICATING LIQUOR.

Kunsberg v. State, Ga. 95 S. E. 12. *Right to prohibit manufacture, etc., of non-intoxicating substitutes.*

Section 2 of the act of the General Assembly, approved November 17, 1915 (Acts 1915 [Ex. Sess.], p. 77), makes penal the manufacture, sale, offering for sale, keeping for sale, etc., of prohibited liquors and beverages as defined in section 1 of the act; among them being: "All liquors and beverages or

drinks made in imitation of or intended as a substitute for beer, ale, wine or whisky, or other alcoholic or spirituous, vinous, or malt liquors, including those liquors and beverages commonly known and called near beer." On the basis of protecting health, morals, and the public safety, the provisions of the act making it illegal to manufacture, sell, etc., intoxicating liquors have been held to be a valid exercise of the police power. *Delaney v. Plunkett*, 146 Ga. 547, 91 S. E. 561, L. R. A. 1917D, 926, Ann. Cas. 1917E, 685. The manufacture and sale of drinks made in imitation of or intended as a substitute for intoxicating drinks as specified in the act, although not intoxicating themselves, afford a cloak for clandestine manufacture, sale, etc., of intoxicants—the evil which the legislation was designed to prevent. Under such circumstances, the power to prohibit the manufacture, sale, etc., of the beverages will include the power also to prohibit the manufacture and sale of substitutes and imitations. *Purity Extract Co. v. Lynch*, 226 U. S. 192, 33 Sup. Ct. 44, 57 L. Ed. 184. Under this view, it is within the police power of the state to enact a law prohibiting the manufacture and sale of liquors and beverages not intoxicating in character, but made in imitation of or intended as a substitute for beer, ale, wine, whisky, or other alcoholic or vinous or malt liquors, or those liquors commonly known and called near beer. Under this view the provisions of the foregoing act which are assailed in this case are not violative of article 1, sec. 1, par. 3, of the constitution of this state (Civ. Code 1910, sec. 6359), which declares, "No person shall be deprived of life, liberty, or property, except by due process of law," or the Fourteenth Amendment to the Constitution of the United States (Civ. Code 1910, sec. 6700), for the alleged reason that the Legislature had no authority to declare the sale of an imitation of beer an offense. See, also, *Arthur v. State*, 146 Ga. 827, 92 S. E. 637.

(a) In none of the assignments of error was the question made that the act was void on the ground that it was indefinite, and no ruling is made on that point.

JURISDICTION.

State v. Wellman, Kans. 170 Pac. 1052. *Right to try person illegally extradited.*

Although the federal law does not provide for the surrender by a state as a fugitive from justice of one who has violated the criminal laws of another state without having been present therein, and although in the absence of state legislation no authority exists for such surrender, nevertheless, where, in the absence of any local statute, a person is surrendered by one state to another as a fugitive from justice, the fact that the accused had not been in the demanding state at the time of the alleged offense, or since then, does not deprive its courts of jurisdiction to try him therefor, nor does it show such an abuse of process as to warrant the dismissal of the case against him.

WEAPONS.

People v. Smith, Calif. 171 Pac. 696. *Constitutionality of statute forbidding the carrying of concealed weapons.*

St. 1917, p. 221, sec. 3, providing that every person who carries in any municipal corporation any pistol, revolver, or other firearm concealed upon his person without license, shall be guilty of a misdemeanor, and guilty of a felony

if previously convicted of any felony, or any crime made punishable by the act, is a reasonable police regulation.

St. 1917, p. 221, sec. 3, is not objectionable, as *ex post facto*, on account of the provision prescribing a heavier penalty for one previously convicted.

FROM WILLIAM G. HALE.

ACCESSORY.

People v. Birntner (N. Y. Supr.), 168 N. Y. S. 945. *Conviction of "Accessory" after Acquittal of Principal—Admissibility of Judgment Against Principal.*

The defendant moved for a dismissal of the indictment against by which he is charged as an accessory to the crimes of rape, abduction and assault, on the ground that the principal felon had been acquitted. Motion denied.

(1) Under our statute the offense of being an accessory to a felony is now a substantive crime, punishable without regard to the disposition of the principal felon. (2) A judgment in the principal felon's case, whether of conviction or acquittal, is not admissible for any purpose in an action against the accessory.

CONFESSION.

People v. Reilly (N. Y. Sup. Ct., App. Div.), 169 N. Y. S. 119. *Voluntary character—Involuntary admissions of accused.*

(1) A promise of clemency made to the accused by a priest in the presence of the assistant district attorney and not opposed by him, will render a confession inadmissible, the statement of the priest being in effect adopted by the district attorney. (2) To come within the rule that excludes involuntary confessions, the statement of the accused need not be a complete confession.

CONSPIRACY.

People v. La Bow (Ill.), 118 N. E. 395. *Reversal as to one of two conspirators, jointly tried.*

La Bow and Shapiro were convicted of a conspiracy to obtain money by means of a confidence game. The Appellate Court reversed the judgment as to Shapiro. Held: It was error for the Appellate Court to affirm the judgment of the Criminal Court as to La Bow and reverse it and remand the cause as to Shapiro. Both must either be found guilty or not guilty. In order to sustain a conviction of conspiracy there must be more than one person shown to be guilty. Since there was no evidence of the existence of any other co-conspirator than Shapiro, it must follow that if Shapiro was not guilty, La Bow was not guilty. The case should, therefore, be reversed and remanded as to both La Bow and Shapiro.

IMPEACHMENT OF WITNESS.

People v. Richardson (N. Y. Ct. of Appeals), 118 N. E. 514. *Cross-examination of a witness which besmirches character of accused.*

The defendant was convicted of keeping a disorderly house. K. N., who was employed as housekeeper at the Fulton Hotel (the house involved), was a witness for the defendant. Upon her cross-examination she was asked whether she had not worked for the defendant at certain other hotels with knowledge that they had been abated as public nuisances because conducted by the defendant

as disorderly houses, and with knowledge that the defendant had been convicted and sentenced to jail for running one of them, and other questions of a similar sort. Held: This was improper cross-examination. While it had a tendency to impeach the witness by showing what manner of person she was, yet it should be excluded because it brought the defendant's conduct and general character into the case when he was not a witness and had not first put his character in issue. Such evidence would be unfair to the accused. Chase, J., dissenting.

INDICTMENT.

People v. Van Every (N. Y. Ct. of Appeals), 118 N. E. 214. *Allegation as to time—Amendment.*

The Code of Criminal Procedure, sec. 293, provides: "Upon the trial of an indictment, when a variance between the allegation therein and the proof, in respect to time, or in the name or description of any place, person or thing, shall appear, the court may, in its judgment, if the defendant cannot be thereby prejudiced in his defense on the merits, direct the indictment to be amended, according to the proof, on such terms as to the postponement of the trial, to be had before the same or another jury, as the court may deem reasonable."

In the instant case the indictment alleged a time subsequent to the finding of the indictment, the year 1915 instead of 1914 being inserted. Held: The indictment could not be amended. Such omission was not one of form but of substance. The indictment did not show that any crime had been committed. If the court were to allow an amendment in such a case, it would be exercising the power of the grand jury.

SETTING ASIDE VERDICT.

People v. Bond (Ill.), 118 N. E. 14. *Sufficiency of evidence.*

The defendant, a negro, was convicted of the murder of a white woman. Seven witnesses, all friends of the defendant, testified to an alibi. Held: Notwithstanding the evidence tending to establish an alibi, there was sufficient evidence to sustain the verdict. The jury obviously did not believe the witnesses for the defendant. Judging of their credibility was the province of the jury.

CRIMINAL LAW.

Former jeopardy—Conspiracy to steal.

Where the accused has engaged with another in a criminal conspiracy or plan having for its purpose the larceny of specific automobiles belonging to separate owners, and in pursuance of such plan the confederate steals such automobiles at divers times and places, each theft is held in the Ohio case of *Patterson v. State*, 117 N. E. 169, annotated in L. R. A. 1918 A, 583, to constitute a distinct and separate offense, and an acquittal of one is not available under the doctrine of jeopardy on the trial of the other.

Witness—Remark by the court.

It was held fatal error in the North Carolina case of *State v. Rogers*, 91 S. E. 854, annotated in L. R. A. 1917 E, 857, for the judge to direct defendant as a witness in a criminal case to answer the questions of the prosecutor yes or no, and not to be dodging, notwithstanding the court thereafter instructed the jury that he did not intend to reflect upon the witness by using the word dodging.

JOSEPH MATTHEW SULLIVAN, Boston, Massachusetts.

FROM THE HON. CHARLES S. LOBINGIER

IN THE UNITED STATES COURT FOR CHINA.

United States v. A Juvenile Offender. (Filed February 9, 1918.)

SYLLABUS

(1) Criminal Law: *Penalties* for false pretense and petit larceny in this jurisdiction may extend to one year or more.

(2) *Juvenile Offenders* are not, according to the notions of modern penology, to be treated in the same way as adults.

(3) *The Juvenile Court Law*, enacted by Congress for the District of Columbia, found necessary and suitable in this jurisdiction and applied.

Chauncey P. Holcomb, Esquire, U. S. District Attorney, for the prosecution. The accused appeared in his own behalf.

Lobingier, J.: The accused, who is an American subject born in Shanghai of Filipino parentage, pleads guilty to two informations, the first charging him with

"the crime of False Pretense, in that * * * on or about the thirty-first day of January, 1918, at Shanghai, in the Republic of China, and within the jurisdiction of said Court," he "did by false pretense and intent to defraud, obtain a pair of shoes, of the value of less than thirty-five dollars."

The second charges him with

"the crime of Petit Larceny, in that * * * on or about the fifteenth day of December, 1917, at a dwelling house known as 139 Paoshang Road, in Shanghai, in the Republic of China, and within the jurisdiction of said Court," he "did feloniously take and carry away a blue cloth coat, the personal property of a Chinese woman, whose name is unknown, of the value of less than thirty-five dollars."

The complaining witnesses in each cause are defendant's father and mother each of whom, testifying on the question of the proper penalty, relates a harrowing story of youthful incorrigibility and lawless, irresponsible conduct for which there appears to be no remedy except authoritative discipline; for the father is a mariner and necessarily absent from home a considerable portion of the time, and the mother states that she is absolutely unable to control the accused.

Both of the offenses charged and admitted in these proceedings are serious, each justifying penal servitude.¹ In this case, however, the offender, according to his parents, is but fifteen years old and it is contrary to the spirit of modern penology to impose upon juvenile offenders (whose need is reclamation and reform rather than punishment) the penalties intended for adults. As the result of a growing sentiment in that direction juvenile courts have been established in many parts of the United States and special laws have been enacted for the

¹(*False Pretense*) Act of Congress of June 30, 1902, 31 U. S. Stats. at Large, ch. 854, sec. 842, 32 U. S. Stats. at Large, ch. 1329, sec. 842, Dist. of Col. Code, sec. 842 (maximum penalty one year and fine); Act of Congress of March 3, 1899, 30 U. S. Stats. at Large, ch. 429, sec. 54, Alaska Compiled Laws, sec. 1934 (maximum penalty five years).

(*Petit Larceny*) Act of Congress of June 30, 1902, 32 U. S. Stats. at Large, pt. I, p. 535, sec. 837, Dist. of Col. Code, sec. 827 (maximum penalty one year and fine); Act of Congress of March 3, 1899, 30 U. S. Stats. at Large, ch. 429, sec. 41, Alaska Compiled Laws, sec. 1921 (maximum penalty one year and fine); Fed. Pen. Code (1910), sec. 287 (maximum penalty one year and fine).

juvenile offender. Such a statute² was passed by Congress in 1906 and, while primarily intended for the District of Columbia, seems fully applicable here by virtue of the prior enactment extending over Americans in China "the laws of the United States * * * so far as is necessary to execute such treaties" and "so far as such laws are suitable,"³ etc.

The court which is empowered to enforce and apply said statute (and which in this jurisdiction would necessarily be this because none other is provided and the one nearest corresponding must therefore be utilized⁴) is expressly authorized

"to defer sentence, at its discretion, in the case of any juvenile offender under the age of seventeen years, and parole such child under the care of the chief probation officer for a probation period discretionary with him, who shall cause said child to return to court at the end of such term either for sentence or dismissal."⁵

The Supreme Court has indeed decided⁶ that the Federal Courts have no *inherent* power to suspend sentences, but that decision would clearly not apply to cases arising under a statute which, like this, expressly provides for such suspension. We hold that the statute is both necessary and suitable for cases like the one at bar because the laws above referred to, prescribing the penalty, are wholly unsuitable. We feel also that the offender, being a Filipino, can most properly be placed in the custody of the Philippine authorities.

Final sentence is accordingly suspended in these causes, and the Philippine Director of Prisons, Dr. Walter H. Dade, is hereby named as probation officer to whose care and custody the accused is accordingly committed for a probation period discretionary with said officer but not exceeding three years, during which time the accused may, in the discretion of said probation officer, be confined in any penal or reformatory institution of the Philippine Government under the control and direction of said officer. Pending his transfer to the custody of said officer the accused is remanded to the custody of the United States Marshal for China.

By The Court,

CHARLES S. LOBINGIER, Judge.

PRESS COMMENT

(*From the North China Daily News, February 11*)

"So soon after our article on the need of new methods of dealing with juvenile offenders in Shanghai as well as the 'won't works,' it is interesting to see that the United States Court has had such a case before it, which Judge Lobingier has been able to dispose of very satisfactorily by sending the offender to a reformatory in Manila for any necessary period up to three years. Long

²34 U. S. Stats. at Large, pt. I, p. 3, Dist. of Col. Code, App.

³12 U. S. Stats. at Large, p. 73, sec. 4; U. S. Rev. Stats., sec. 4086; *Biddle v. U. S.* 156 Fed. 759.

⁴*Alaska Gold Mining Co. v. Ebner*, 2 Alaska 611, Cf. U. S. ex rel. *Raven v. McRae*, No. 586.

⁵Act of Congress of March 19, 1906, 34 U. S. Stats. at Large, pt. I, p. 73 (D. C. Code, Appendix), sec. 5.

⁶Ex parte U. S., 242 U. S. 27.

before that, it is to be hoped, the youth will have seen the folly of his ways. In having an available reformatory at Manila and laws which enable juvenile offenders to be sent there the American community is more fortunate than others. The British have nothing to offer but goal, and both police and magistrate are naturally most reluctant to send boys there who, under the wiser treatment which most civilized communities have now instituted, might be made useful members of society. The difficulty is, of course, that there are not enough of such cases to warrant building a reformatory. Some years ago one was built privately and presented to the Hongkong Government, which eventually found a use for it by turning it into a Door of Hope. Still, juvenile offenders exist and will not tend to diminish in number. The industrial homes suggested for 'won't works' with a separate wing for juveniles might meet the need."

NOTES AND ABSTRACTS

ANTHROPOLOGY—PSYCHOLOGY—LEGAL MEDICINE

The Work of Dr. Amos O. Squire in Sing Sing Prison.—Dr. Amos O. Squire, chief physician to Sing Sing Prison, recently delivered the following comprehensive review of his work in the prison:

"I am glad of this opportunity to state that I am in favor of, and in sympathy with, a study of the criminal from the point of view of Psychiatry, or any other agency which will give promise of lessening crime, or improve the mental and the physical conditions of the criminal. This applies not only *after* he gets to prison, but more particularly *before* he is sentenced by the court.

"Not being a Psychiatrist, it would not be expected of me to discuss that particular branch of medicine, but I wish to say a few words about my experiences with criminals, as physician-in-charge at Sing Sing Prison. No one could be there for any great length of time without being impressed by the fact that a large percentage of our prison population are below par from the average in mental and physical health; and Dr. Glueck states in his report that this would be about 59 per cent—he further states that about 66 per cent were repeaters, having been in some penal institution or reformatory before, and I have no doubt but that these figures will be borne out in the records of other prisons.

"I am impressed more and more every day with the fact that the treatment of the criminal is a medical one, and that the only hope of success lies in a careful, thorough and systematic study of each individual case, and not by a haphazard or slipshod examination. It has been our custom for some time past to make a careful physical examination of every new admission. Whenever we find an inmate suffering from any physical disability which can be corrected by surgical interference this fact is noted on his card and at the earliest possible moment the condition is corrected. Although I have not as yet seen the inmate that had what might be called a general criminal physique, I do believe that there are physical conditions, peculiarities and ailments that have a very direct bearing on prisoners or delinquents, and they should be corrected if possible, not only to improve the inmate's health, but also not to stand in his way of social success.

"Dr. Healy has stated that physical conditions concerned with the causation of delinquent tendencies could be divided into those which cause weakness, and those which cause irritation. I will review a few that occur to my mind. First: Ocular ailments. During the past year we have made a careful examination of the eyes of the inmates upon their entering prison, and believe that in at least ten or fifteen per cent of the cases it could be regarded as a factor in the cause of delinquency. We all realize that eye strain or defective vision would lead to irritability and headaches and have its influence on their education and other interests. Second: Teeth. The examination of the inmate's teeth is a part of our regular procedure, but until September 1st of this year, the state did not have its own dentist in prison. This year \$500 was appropriated for his services, and we now have a visiting dentist who spends one day a week. There is a crying need for a full-time dentist; with our large population at Sing Sing and the number of men with defective teeth, he could be kept busy every day;

75 per cent of the inmates need his services and we all realize that carious teeth is a menace to one's general health and stands in the way of social achievements. They are unable properly to masticate and there is constant absorption into the system of poisons due to the decay. All men should be furnished on admission with a tooth brush and other toilet articles, and I have made mention of this fact in my early report just completed.

Third: Nose and Throat, Adenoids, Tonsils and Nasal Obstructions have received our favorable consideration, as we believe that they are frequently the cause of physical weakness and general malaise. During the year ending July 1st, we removed 40 tonsils and performed 41 sub-mucous resections.

"Fourth: Syphilis. During the past year we admitted 928 inmates and found that 20 per cent of them responded to a positive Wasserman reaction. How far this disease plays a part in causing delinquency is a question to be studied. I will state that every man who enters Sing Sing with a positive Wasserman is, the next day, placed on anti-syphilitic treatment.

"As to the effect of alcohol and drugs on delinquency, we all know, and it appears to me that we are getting more with the drug habit than formerly. Last week, out of about fifteen admitted, three were suffering from the drug habit.

"These are a few of the physical conditions that occur to my mind at this time. When you realize that the staff consists of an assistant and myself, together with an oculist, and a genito-urinary man, spending a portion of a day a week, gratuitously, we are unable to give the men the individual attention their physical needs require. Last year 678 minor and major operations were performed and 15,757 prescriptions were written.

"This is no one man's job, but needs the combined efforts of the best talent in all its branches. We are doing the best work we know how with our present facilities and staff, and are looking forward to our New Prison Hospital with its modern equipment and its various departments, so that our work will be more co-ordinated and better results obtained."

Syphilis and Its Treatment in a Reformatory for Women.¹—Syphilis and its treatment in the reformatory for women stands out as one of the most complex and difficult problems from a medical point of view. At the present time the prevalence of syphilis in society as a whole is great and should cause more concern among physicians in general than seems heretofore to have obtained. Each case admitted to the Reformatory for Women at Framingham is examined for syphilis and the diagnosis is determined by clinical findings and by the reaction of the blood serum to the Wasserman test. During the past three years 502 cases, or approximately 47 per cent of those admitted to the institution, were found to be luetic.

The cases divide themselves naturally into two classes—the congenital and the acquired infections. The congenital infections are comparatively few, numbering only 13, or 2.6 per cent of the 502 cases. Congenital syphilis in our group has been noted in girls whose ages range from 17 years to 21 years. Invariably these girls are undernourished and show some physical stigmata—such as cicatrices of skin and cornea, partial spastic paralysis from cerebral endarteritis, and marked nervous irritability.

¹Read before the Physicians' Association (Section of the American Prison Association), New Orleans, November, 1917.

Interstitial keratitis is a common result of congenital infections and most resistant to treatment, often recurring, each recurrence more tenacious than the preceding. These cases have been found to respond more readily to mercury and to potassium iodide than to the arsenical preparations. In fact some of the congenital infections seemed not to be affected at all by salvarsan as far as the immediate condition was concerned. Treatment in these thirteen cases of congenital syphilis was continued over a period of from one and one-half to three years and only the negative Wasserman was obtained, although each experienced relief from symptoms.

The acquired infections are of course subdivided into primary, secondary, and tertiary stages. It is often difficult to obtain an accurate history from many of our patients of the time of the infection and of the site of the initial lesion; however, it is fair to assume that extra-genital lesions among our women are very rare, as only three authentic cases have been recorded by us. Innocence of the fact of infection is often sincere, as the chancre may be high in the vaginal canal. The primary stage is rarely met with at the time of admission. So far only 4.7 per cent of the number have been at this period of the disease.

Infections in the secondary stage are most frequently encountered—forming 56.5 per cent of the cases. Here there are two types of patients to be considered—first, those who present active manifestations, and secondly, those whose disease is apparently latent, and from whom it is difficult to get a distinct history. It is easier to obtain the confidence of those patients whose symptoms are obvious to the patients themselves. There is a marked difference in the desire for treatment and care in these two groups, the patients who recognize their condition being eager for help, those whose condition is latent being unwilling to admit defeat and yield to treatment.

The period of latency has been described as “the stage of equilibrium between the host and the parasite.” Latent syphilis is often not recognized at first without the aid of the Wasserman reaction. But careful inquiry will reveal symptoms which are very important—these symptoms are usually vague and often attributed to neurasthenia. During this period of quiescence it is necessary to push treatment in order to protect the patient from later parasyphilitic complications, such as locomotor ataxia and general paresis.

The tertiary stage, comprising 38.3 per cent of our cases, is the period of late manifestations coming at different times in different patients—some having been noted as early as three years and a few appearing as late as twenty years after the primary lesion. During this period the danger of infecting others is probably little.

Treatment of Syphilis. The efficacy of the treatment of syphilis depends on:

1. The stage of the disease.
2. Severity of the infection—which is further dependent on the patient's resistive power.
3. Age of the patient.
4. Intensity of treatment.
5. Length of time under treatment.

The efficacy of the treatment is determined by persistently negative Wasserman reactions after a shorter or longer period and absence of all objective and subjective symptoms.

In this study the patients have been classified under three heads—first, those treated with mercury and iodides alone; secondly, those treated with salvarsan or its substitutes; and third, those treated with series of mercurial and iodide medications and with a series of intra-venous injections of salvarsan.

1. Until one year ago all syphilitic patients in the institution were treated only with mercurial inunctions, injections or pills, and potassium iodides. Forty-seven and nine-tenths (47.9) per cent were so treated over periods from one year to three years.

Mercury as an anti-syphilitic has been found slow and tedious; and because of this, discouraging to patient and physician. Patients poorly nourished, with low metabolism, show poor tolerance to mercury—especially when forced to the extent necessary in cases with manifest symptoms. Mercurialism can hardly be avoided in many cases, even when careful watch is kept of the excretory functions. We have found that primary lesions heal when treated with mercury in from three to five weeks, however, in the congenital and tertiary syphilide mercury was found to give the best results.

With mercury and the iodides, as the only anti-syphilitic, negative Wasserman reactions were obtained in 34.9 per cent of the cases after treatment had been discontinued six months. Of the 34.9 per cent, four cases were in primary stage, twenty-four in secondary stage, eight in tertiary stage, and one was a congenital syphilitic. Thirty (30) per cent were treated from nine months to one year; thirty-five (35) per cent from one year to two years; and eight (8) per cent for over three years.

One case is that of a girl admitted to the institution two and one-half years ago in the secondary stage of the disease—and latent. Intensive mercurial treatment was given for two years with a resulting negative Wasserman reaction. She was released from the institution—a few months later returned and her blood serum responded positively to the test.

2. Salvarsan or its substitutes, usually diarsenal, have been used exclusively in a series of twenty-five cases. The most remarkable results from arsenical preparations have been noted in primary lesions and in those cases with manifest secondary lesions. Its action is much more rapid than mercury, and the dosage may be increased with successive doses with scarcely any symptoms of toxæmia. We have varied the doses of diarsenal according to the age and size of the patient—starting with a minimum dose of 0.4 grammes and reaching a maximum of 0.7 grammes in some cases.

One interesting case is that of a girl of nineteen, who entered the institution one year ago in very poor general condition. She had an ulcer of the lower lip, which showed all characteristics of a chancre. However, her Wasserman reaction, done on three different occasions with three different specimens of blood, gave one negative and two doubtful returns. Calomel ointment was used for one week on the ulcer and a mild mercurial poisoning was produced. She was given a small dose of diarsenol, 0.25 grammes, as a provocative, and her blood then drawn within eighteen hours, and the report was positive. Since then she has been treated rather intensively with diarsenol and on the last two tests gave a negative report.

Twenty-four per cent of the cases treated with diarsenol alone gave negative findings within a period of one year. This is less than the number obtained with the use of mercury alone, but over a much shorter time. Most striking results have been obtained in the treatment of those cases of general debilitated

condition, giving no history of syphilitic infection, but responding positively to Wasserman test, with a single dose of diarsenol. The patients very soon begin to gain in weight and their general tone improves.

3. The combined use of mercury and diarsenol has given best results in securing a negative Wasserman plus relief from all symptoms. From this mixed treatment 37 per cent negative reports were secured. The most practicable method of giving this treatment is in series of inunctions of blue ointment, an inunction daily for five weeks; then a rest of one or two weeks; then a series of intra-venous injections of diarsenol—one each week for five weeks. The patient is then allowed to rest over a period of two or three weeks and the same treatment is begun again. This method must, of course, be varied in different individuals.

After the most careful and intensive treatment resulting in a negative Wasserman we have had cases show later signs of tertiary syphilis, as shown by the case of a woman of 27, with whom we began treatment in the secondary stage two years ago. After treatment for one year and a half with mercury and diarsenol, she gave a negative Wasserman. Three months later she came to clinic with tertiary syphilitic lesions and a positive Wasserman. An examination of the blood six months or a year after all treatment has been stopped has served as our standard of cure.

From this study the following conclusions may be drawn:

1. Among the cases reported here there were 4.7 per cent in primary stage, 59.5 per cent secondary stage and 38.8 per cent in tertiary stage.
2. In the treatment of the primary stage of syphilis the arsenical preparations are the most effective. In the treatment of the secondary and tertiary stages combined use of mercury and arsenic gives best results, but mercury alone in the tertiary stage gave better results than diarsenol alone.
3. Hope of cure may rarely be offered to the patient under three years, and even then it is likely that a positive Wasserman may return.
4. A negative Wasserman during course of treatment means only that and diarsenol, who gave a negative Wasserman. Three months later she
5. Intensive treatment during the period of latency is important in order to prevent parasymphilitic conditions.

Forty-seven per cent of the total population of the reformatory is syphilitic.—Elizabeth A. Sullivan, M. D., Reformatory for Women, Framingham, Mass.

Report of the Committee (San Francisco) for the Advancement of Medico-Psychological Examinations for Adult and Juvenile Delinquents.

OBJECTS

1. To investigate the feasibility of establishing Medico-Psychological laboratories, in conjunction with adult and juvenile courts.
2. To determine on the staff and equipment of such laboratories, the methods of recording data and disposing of cases.
3. To ascertain the value of such laboratories to municipalities.
4. After determining for itself the social necessity for the Medico-Psychological laboratories, then to seek ways and means to stimulate public interest in the project.
5. To deal with the problems presented by the mentally and nervously

unfit members of the community in order that the most dangerous may be eliminated from among the possibilities of menace, and in order that the least harmful may be adjusted to environment.

6. The scientific diagnosis, registration and research of mental deficiency and nervous diseases, and the detention of the sufferers, are the principal aims of this committee, and in carrying out this purpose the following plan should be developed:

- (a) All persons found asocial, actually or potentially, as a result of suspected mental defects or nervous diseases should be referred to a municipal or county psychopathic clinic by the department or officer in whose custody they may be.
- (b) In this plan are embraced methods of examining school children suspected of being abnormal mentally or nervously (nervously unstable).

9. Prophylactic criminology in the examination of school children. Real prophylaxis involves recognition of all biological defects in the individual at an early period in his development.

10. The accumulation of data on all of the above and the development of the very best plan or scheme possible, for prophylactic criminology and the subsequent education of all concerned as to the necessity for the proper and legal adoption of this or some similar scheme for development of psychopathic laboratories in conjunction with our adult and juvenile courts, and school system.

Meetings were held and officers elected and special and sub-committees appointed to put into effect the objects of this general committee. It was decided to secure information concerning the economic value and costs of Medico-Psychopathic clinics.

The special committee submitted the following report:

I.—(1) The purpose of the committee being to advance Medico-Psychological examinations, it is therefore recommended that a psychopathic clinic be established which will conduct a thorough psychiatric, neurological, psychological, sociological, serological, and general medical examination in all felony cases.

(2) That research be instituted into the causes of crime and the prevention thereof.

(3) That the clinic furnish to the courts and to the chief of police a report embodying complete diagnosis, prognosis, and brief summary of the case, based entirely on actual facts, and observation of the individual examined, in order,

- (a) That prisoners may be confined in proper institutions for treatment or care when necessary, and not sent to jail, where the mental condition is made worse;
- (b) That prisoners suffering from certain types of mental diseases may be committed to hospitals for permanent cure, and not tried in criminal courts for crime;
- (c) That certain types of individuals who can never make good on probation or parole may be committed to penal institutions for the longest period of time allowed by law, which will tend to do away with the old system of arresting the same individual a great number of times, and will lessen the labor of probation and parole officers, as well as that of the courts and the police officers. And

(4) That the clinic offer suggestions for vocational guidance of prisoners who have special abilities, or who may be suffering from special disabilities—to the end of conserving human energy and directing it into lines that contribute to the happiness of the community.

II.—We recommend that San Francisco be selected as the city in which we should urge the establishment of a psychopathic clinic.

III.—The laboratory shall be supplied with necessary equipment.

The staff shall consist of the following specialists: Psychiatrist, neurologist, psychologist, physician, ophthalmologist, social worker, stenographer.

IV.—We further recommend:

- (a) That a committee of three be appointed from the general committee to secure the voluntary services of the above staff.
- (b) That a committee of three be appointed from the general committee, to secure the equipment noted in III and to secure the necessary permission from the proper authorities to conduct the examinations.
- (c) That a committee of three be appointed from the general committee, which shall have for purpose the dissemination of general information (among those charged with responsibility of law enforcement) concerning the relation of mental peculiarities and abnormalities and nervous and mental diseases to crime.

At the last meeting of the general committee the sub-committees reported:

1. Some of the most prominent persons specializing in general medicine, neurology, psychiatry and psychology have signified their willingness to begin work in the near future.

2. Well lighted and sufficiently equipped rooms have been secured for the staff. The committee has also secured the consent of San Francisco officials to conduct Medico-Psychological examinations. Arrangements have been made for the dissemination of general information (among those charged with responsibility of law enforcement) concerning the relation of mental diseases to crime.

Despite many discouragements and notwithstanding the great amount of work entailed, your committee has found considerable pleasure in developing the work and has had the active co-operation of laymen, officials, and those of scientific attainments.

It is a source of considerable gratification that Medico-Psychological clinics have been established in the following places: Alameda, Berkeley, Oakland, Los Angeles, and San Francisco. We take pleasure in announcing also that our hopes for a San Francisco clinic to examine adult delinquents are soon to be realized.

The individuals who have promised to do the work in San Francisco have not as yet reported any organization to the committee, but have agreed to establish a clinic and act as voluntary workers for a length of time sufficient to demonstrate to the authorities of this state and to those interested in other states, the advantages or disadvantages, or both, of such clinics.

The scope of the work in San Francisco will be very great; it involves for a period of not less than three months Medico-Psychological examinations of all adult felony cases. Inasmuch as this will involve the examinations of approximately one hundred individuals each month, considerable expense will, of necessity, be attached to this work. While the persons agreeing to make the examinations are of the highest scientific attainments and are giving their

services voluntarily it must be understood that experienced clerical help will be necessary. Also certain materials and equipment will have to be paid for, and undoubtedly the money can be raised in San Francisco. The work of the committee has just begun. It is hoped that Medico-Psychological clinics will be established in all the prominent cities of California; furthermore, and most important of all, these Medico-Psychological clinics, with their trained staffs and organizations, will be of assistance to the government, acting as nuclei for larger and more elaborate organizations which will assist in taking care of the nervous and mental cases returned from the "front." These organizations could have attached to their staffs experts in vocational guidance, individuals who, by their knowledge of the need of the various vocations, would be enabled to advise as to the proper vocation for invalided soldiers.

The value of such organization as above, if there be proper co-operation, is beyond our conception.

Respectfully submitted by the committee:

RABBI MARTIN A. MEYER, San Francisco, Cal.

MR. JACOBI, Chief of Police, Alameda, Cal.

MR. AUGUST VOLLMER, Chief of Police, Berkeley, Cal.

JUDGE BEASLY, Superior Court, San Jose, Cal.

MR. J. A. JOHNSTON, Warden of California State Prison, San Quentin, Cal.

MR. H. E. KNOLLIN, 3103 Summit Street, Oakland, Cal.

MR. O. F. SNEDIGAR, Probation Officer, Oakland, Cal.

(Mr. Wood.)

MR. LEWIS M. TERMAN, Stanford University, Palo Alto, Cal.

MR. L. D. COMPTON, Probation Officer, Oakland, Cal.

MR. B. H. PENDLETON, State Board of Charities and Corrections, Oakland, Cal.

MR. W. H. NICHOLS, Hall of Justice, San Francisco, Cal.

DR. JAU DON BALL, Oakland, Cal.

DR. PAUL JEROME ANDERSON, Oakland, Cal.

DR. H. G. THOMAS, Oakland, Cal.

DR. LILLIEN MARTIN, San Francisco, Cal.

COURTS—LAWS

Constitutionality of Act Authorizing Operations for Prevention of Procreation in New York. (Decision handed down in the Supreme Court, March 5, 1918.) Frank Osborn vs. Lemon Thomson, Charles H. Andrews and William J. Wansboro, composing the Board of Examiners of Feeble-Minded, Criminals and Defectives.

Rudd, J.—Chapter 445 of the Laws of 1912 is an act amending the Public Health Law by adding section 19 thereto, in relation to operations for the prevention of procreation. It provides, in substance, as follows:

1. The appointment of a Board of Examiners, consisting of one surgeon, one neurologist and one practitioner of medicine, to be known as the Board of Examiners of Feeble-Minded, Criminals and Other Defectives.

2. Making it the duty of this board to examine into the mental and physical condition and the record and family history of the feeble-minded, epileptic, criminals and other defectives confined as inmates in the several

state hospitals for the insane, state prisons, reformatories, and charitable and penal institutions of the state, and if, in the judgment of the majority of said board, procreation by any such person would produce children with an inherited tendency to crime, insanity, feeble-mindedness, idiocy or imbecility, and that there is no probability that the condition of any such person will improve to such an extent as to render procreation by any such person advisable, or if the physical or mental condition of such person will be substantially improved thereby, that then the board shall appoint one of its members to perform such operation for the prevention of procreation as shall be decided by said board to be most effective.

The criminals who shall come within the operation of this law shall be those who have been convicted of the crime of rape or of such succession of offenses against the criminal law as in the opinion of the board shall be deemed in the criminal examined to be sufficient evidence of confirmed criminal tendencies.

3. It is the duty of this board to apply to any judge of the Supreme Court or county judge of the county in which said person is confined for the appointment of counsel to represent the person to be examined. The counsel shall act for such person at a hearing before the judge or in any subsequent proceedings, and no order made by the board shall become effective until five days after it shall have been filed with the clerk of the court and a copy shall have been served upon the counsel appointed to represent the person examined. Orders made by the board are subject to review by the Supreme Court or any justice thereof.

Under this law, a Board of Examiners was appointed consisting of the petitioners herein. Such board determined to perform the operation known as vasectomy upon Frank Osborn, an inmate of the Rome Custodial Asylum, twenty-two years of age, strong physically, who has been an inmate of that institution for several years, and who is in the class known as feeble-minded.

As indicated by the title above, Frank Osborn, through counsel appointed by Mr. Justice Chester, began an action against the members constituting the Board of Examiners, asking a permanent injunction restraining the carrying out of the determination of the board with reference to an operation upon him; and in the action thus brought are raised questions as to the constitutionality of the act.

We have under consideration the questions which have arisen in review of the determination of the board and those which result from the challenge by the counsel of Frank Osborn against the constitutionality of the act. We will first consider the determination of the board.

Dr. Lemon Thomson, one of the Board of Examiners, testified, in substance, that the board had selected Frank Osborn after learning as to his family and after submitting him to a somewhat superficial examination physically and mentally; and that such selection was made because, in the opinion of the Commission, Osborn could not probably procreate normal offspring. His was what the Board of Examiners thought a bad case.

Dr. Thomson says that he has never performed the operation of vasectomy for sterilization; that in his opinion no benefit would come to the patient from the operation so far as rendering him free from the dangers of the infection of a venereal disease; that the operation would not weaken in Frank Osborn the tendency of the rapist.

Dr. Andrews, a member of the Board of Examiners, testified that he had never performed the operation, and that he had never seen it performed; and while the statute required that the board should determine upon the operation which would be most effective, he stated that vasectomy would not be the most effective operation but, on the other hand, that castration would be. He further testified that he had not given any study to any particular phase of this question.

Dr. Wansboro, of the Board of Examiners, was not called.

Dr. Bernstein, superintendent of the Rome Custodial Asylum, where Frank Osborn has been, as an inmate, since 1907, and in which there are cared for over 1,300 patients, testified that Osborn was of a higher grade of feeble-mindedness; that the actual number of feeble-minded in our state had not proportionately increased in twenty-five years; that because of the demands of society there developed many social failures; that there had been a persistent demand for the removal of such individuals from temptations in the community; and these social failures are forced upon the attention of the state, and it has been accepted as a principle that the state must care for defectives; that such people should not be looked after by any social or political division of the state. The doctor testified that he had observed 5,000 feeble-minded patients; that Osborn could not earn his living outside of the institution if he were turned out into the world; that he had an "eight year" mental capacity; that all patients in the institution are segregated; and upon the question of Osborn being able to procreate normal children, he said, "We are taught that the dominant traits appear in three-quarters of the offspring, and recessive traits appear in one-quarter, when the parentage is mixed as regards traits; that it is only in cases of feeble-mindedness of both parents that you would look generally for an increase of feeble-mindedness among offspring."

In other words, that when one parent is feeble-minded and the other of normal mental capacity that the tendency is recessive, that is, towards the normal.

The doctor testified that vasectomy would not change any of the criminal tendencies of the feeble-minded at all; it would only eliminate the one element of procreation; that in his opinion one of the conditions which would result from a general enforcement of the law, as is here determined, would be to tend to create a class of people by themselves who would feel that they were so different from normal humanity that they would go back to promiscuous sexual relations and that there would be known places where these people were harbored and there they would tend to collect. That among a class of such persons upon whom the operation of sterilization has been performed you would find increased sexual intercourse, and that such increased illicit intercourse is a promoter of disease and general demoralization.

Dr. Bernstein, knowing Frank Osborn as an inmate of the institution of which he was superintendent, testified that he was not in favor of the operation upon Osborn which has been recommended. He further said that he did not know of one case in the 1,300 in the institution that it would be desirable to operate upon, giving as a reason that it would not help the boy, and it would not help society. Osborn will have to be supervised and cared for just as well and just as much after the operation as before; after the operation of vasectomy he will want to go where the girls are just as much as he does now; that society needs protection from the raping of little girls and the frightening

of them just as much as it wants protection from a future generation of dependents and delinquents. That vasectomy upon Osborn is not going to give us the thing society wants to have, protection from his possible ravages. In the doctor's opinion this legislation is in advance of our enlightenment—we don't know today what we are dealing with; that a careful and scientific study of ductless glands and their secretions shows that when such secretions forming in the body are interfered with, physiological teaching indicates that conditions are created which affect the brain and the nervous system; and that such interference with these secretions does not cause or bring about a cure or a remedy such as is sought.

Frank Osborn testified. He did a small sum in addition; knows the days of the week; knows his age; but said that he did not know what this inquiry or proceeding meant.

Dr. Davenport, a biologist, testified that he agreed with the statements made by Dr. Sharp, of Indianapolis, in an article entitled "Vasectomy as a Means of Preventing Procreation in Defectives," in the statement there contained that "defective persons are not necessarily to become a public charge, for included within this class are to be found the most gifted as well as the most vicious, weakest and ordinarily the most unhappy of mankind," and mentioning a few of such instances in the names of Chatterton, Goldsmith, Cole-ridge and Charles Lamb.

This statute grows out of studies and efforts of those who are interested in the subject of Eugenics, which has to do with the improvement of the population by taking advantage of laws of heredity; with improving through better breeding. It deals with the inheritance of traits; with changes in population through differential fecundity; the greater or less fecundity of the different classes of population; with changes of population from emigration; or better or worse strains, with hereditary basis of the traits of population. That there is to be found much of good in the most degenerate families known in our land, mentioning the Jukes and the Nams.

The doctor testified that he has not advocated the operation of vasectomy, and that in his opinion segregation of the sexes would be better.

Mr. Van Wagenen, who has studied and written upon the problems of Eugenics, testified that it would be well if voluntary acceptance of such an operation could be had; that when such operations have been done against the will of the patient the psychic effects have been bad; that he would never recommend such an operation except upon those who consented.

Dr. Coakley, a specialist in vivisection, testified as to the danger of infection because of the retained secretions in the body; that in the operation the vas deferens is severed, but that it can be reunited even after considerable length of time, and therefore nothing is accomplished.

Dr. Fernald, superintendent of the school for feeble-minded in Massachusetts, testified that he had never seen an authorized medical statement based upon actual facts which would justify claims made for the results in Indiana where such a law is in operation; that the operation of vasectomy does not in the slightest interfere with the physical act of sex intercourse; that illicit intercourse would result, and the effect thereof would be the exchanging of the burden of feeble-mindedness for the burden of sex immorality or sex diseases and of insanity resulting in that condition which would be quite as serious and would affect people who are producers and burden bearers. It would

prejudice many right-thinking persons who are interested in those who are afflicted against institutions, when it is known that under the law such an operation would be possible against the wishes of the person upon whom the operation is to be made.

The testimony shows that the operation of vasectomy upon the male is simple in its character; that it can be done without anaesthesia, quite painless. That upon the female it is serious in its character, requiring an abdominal section and the risks incident thereto.

A well-authenticated case upon the records shows that in the case of a woman having been sterilized because of feeble-mindedness she was freed from any danger incident to childbirth, was therefore freely inclined to improper sexual relations, and her lack of moral character becoming generally known she was the victim of constant sexual relations with the boys and men of the little village where she lived; that she became diseased resulting in an epidemic of venereal disease in the locality.

The court has set forth sufficient of the testimony and of that portion of it which is practically uncontradicted to indicate that the determination of the Board of Examiners to cause the operation of vasectomy upon Frank Osborn is not justified either upon the facts as they to-day exist or in the hope of benefits to come.

The members of the Board of Examiners apparently know very little about the subject. They have given it no particular study. They are not, in the opinion of the court, justified in the determination which they have reached, and, therefore, upon review of the determination which the board has made, this court reverses the same.

The action above entitled was brought by Frank Osborn against the defendants as members of the Board of Examiners for an injunction restraining the board from causing to be performed an operation upon him to prevent procreation.

It is claimed that the law in question violates the Constitution of the United States in many respects; that it is a bill of attainder; that it is depriving citizens of a trial by jury; and also of the privileges or immunities to which citizens of other states are entitled; that it is compelling a citizen to be a witness against himself, and depriving him of life, liberty and property without due process of law; that it permits infliction of a cruel and unusual punishment; that it abridges the privileges and immunities of citizens in depriving persons of life, liberty and property without due process of law, and denying to persons within its jurisdiction the equal protection of the law.

It is conceded that the proper form of raising the questions of unconstitutionality herein involved, is by an action asking a permanent injunction.

A similar law has been declared unconstitutional by the Supreme Court of New Jersey in the case of Smith against the Board of Examiners, 88 Atlantic Reporter, 963, in an opinion written by Judge Garrison.

The New Jersey Statute gave to the Board of Examiners discretion to determine the form of operation most effective, as does the New York law.

It was thus given to the board to do almost anything which in their opinion would effectively destroy the power of procreation in Frank Osborn, or of any male or female feeble-minded inmate of a state hospital.

The statute seems to vest in the board the discretion to do what Judge Garrison said of the New Jersey law:

"The statute is broad enough to authorize an operation for the removal of any one (in the female) of these three organs, that is the ovary, the Fallopian tube and the uterus, which are essential to procreation."

The subject of the operation in the New Jersey case was an inmate of the State Village for Epileptics, and the New Jersey court said:

"While the case in hand raises the very important and novel question whether it is one of the attributes of government to essay the theoretical improvement of society by destroying the function of procreation in certain of its members who are not malefactors against its laws, it is evident that the decision of that question carries with it certain logical consequences, having far-reaching results. For the feeble-minded and epileptics are not the only persons in the community whose elimination as undesirable citizens would or might in the judgment of the legislature, be a distinct benefit to society. If the enforced sterility of this class be a legitimate exercise of governmental power, a wide field of legislative activity and duty is thrown open to which it would be difficult to assign a legal limit."

Frank Osborn is not a malefactor. He is mentally deficient. He is defective without personal responsibility for such defect. It must be assumed that he is poor in the sense that there are no parents or friends to give him a home and provide for him, and so he becomes a ward of the state to be cared for and treated and strengthened and developed, if possible. He is no different from many others running no doubt into the thousands in our state who are not within the confines of a state institution and who, together taken with those who are in institutions and similarly situated, mentally and physically, make up a large class of mentally deficient people.

Can it be said that the law can direct the physical mutilation of the bodies of those who are in the state's care, and not be concerned with the same class of persons who are in the world at large?

The laws of our state which have been sustained by our courts as a proper exercise of the police power are not found to be a justification of this law.

The statute under consideration concerns certain classes of criminals as well as defectives. In the consideration of the question here, we have properly confined our thoughts to the facts which have developed in the testimony, and those facts only relate to the feeble-minded.

The operation upon the feeble-minded is in no sense in the nature of a penalty and, therefore, whether it is an unusual and cruel punishment is not involved.

The entire purpose of the enactment seems to be to save expense to future generations in the operation of eleemosynary institutions organized by the people of the state to care for those who are afflicted; the theory being that if the Board of Examiners should conclude that every feeble-minded inmate of a public institution should be operated upon either by the operation known as vasectomy or the more radical operation of castration, that then the state would be justified in turning all the people of this class at large to find their own way, trusting that they, in accordance with the theory of the law, could no longer procreate; the state being thus relieved of their care during their lives and freed from the danger of the burden in the future of their abnormal offspring.

Such does not seem to this court to be the proper exercise of the police power. It seems to be a tendency almost inhuman in its nature. The subject of this inquiry is, according to the testimony of the physicians, physically strong.

The same witnesses testify that if turned out into the world after or without the operation he could not care for himself or make a living; that at present, situated as he is, he works and helps the state in meeting the burden upon it in his care.

The last section of the statute under consideration provides that "Except as authorized by this act, every person who shall perform, encourage, assist in or otherwise permit the performance of the operation for the purpose of destroying the power to procreate the human species, or any person who shall knowingly permit such operation to be performed upon such person, unless the same shall be a medical necessity, shall be guilty of a misdemeanor."

It seems clear that Frank Osborn is not given the equal protection of the laws, having in mind many others situated as he is who are not within the walls of a public institution, to which equal protection he is entitled with them. There is afforded to the young man similarly situated as to his physical and mental make-up, who is cared for by his parents in his own home, whose sexual tendencies and capacity may be the same as Osborn's, the protection of the law which makes it a misdemeanor for any person to assist or take part in the operation of vasectomy upon such a subject, while Frank Osborn, because he is an inmate of a state hospital, is not only not protected, but he is subject to such operation without his consent when determination is reached by the board created under this statute.

It seems, therefore, that the provisions of the Federal Constitution to which this law is offensive is that part of the Fourteenth Amendment which declares

"that no state . . . shall deny to any person within its jurisdiction the equal protection of the laws."

The law certainly denies to some persons of a class and similarly situated the protection which is afforded to others of the same class.

The state has power, many times sustained by the courts, to protect the health, morals and welfare of the people, but such protection cannot be afforded unless it applies to all alike.

The courts have sustained the laws which prohibit the marriage contract between epileptics within certain ages, enacted for the same purpose and to accomplish the same end as the law we are considering, but such laws thus sustained have related to all epileptics, they do not alone relate to the unfortunates within hospitals.

Our attention is called to an interesting and most readable opinion by the Attorney-General of California.

His conclusion is

"as regards the castration of confirmed criminals and rapists, and those guilty of sexual crimes I am of the opinion that these are grave constitutional questions," but "as restricted to the sterilization of the inmates of prisons and hospitals by the method of vasectomy, I am of the opinion that there are no legal inhibitions upon this enlightened piece of legislation which is an awakening note to a new era and a great advance toward that day when man's inhumanity to man will have acquired a meaning beyond mere frothy sentiment."

Why sterilization by vasectomy of patients in a hospital, who are grouped as a class with rapists in a state prison, strikes an awakening note in a new era and will lead to the day to which the attorney-general so poetically refers, is beyond the comprehension of this court and is not enlightening.

Our conclusion is that the statute is unconstitutional and therefore invalid. Judgment may be entered accordingly.

Need for Public Defender Illustrated in the Stielow Case.—Governor Whitman's action in commuting the sentence of Charles F. Stielow under a conviction for murder in the first degree, and permitting his discharge from custody, presents a striking instance of the need for a public defender to represent indigent accused persons. The entire history of this famous case demonstrates how manufactured testimony, detective testimony, expert testimony, legal technicalities, and the powerful forces of prosecution can be utilized to jeopardize human life. The argument, so often urged, that it is impossible for an innocent man to be convicted of crime because of the "legal safeguards" provided by our system has been completely shattered by the facts developed in this case.

Stielow, the victim of a "third degree" confession, convicted of murder, four times in the shadow of the electric chair and snatched from the jaws of death at the last moment, affords a striking illustration of the possibilities of judicial murder. His final vindication is due solely to the efforts of a group of private individuals and of certain newspapers. Resort to the ordinary legal processes was wholly ineffective.

The governor stated in his recent memorandum that "had the evidence which was developed on this inquiry been presented to the trial court at the time Stielow was tried, such evidence would necessarily have resulted in a direction of a verdict for the defendant or his acquittal by a jury." Why was this evidence not produced at the trial? What is the function of a trial except to bring out the entire truth?

Governor Whitman deserves great credit for finally vindicating Stielow. Nevertheless, the facts disclosed in the case show conclusively the defects of our criminal system, the existence of obsolete "red tape," the danger of expert testimony, and the helplessness of indigent accused persons to adequately fight the prosecuting machinery.

The state should be as interested in protecting innocence as punishing guilt. The defense should have the same power and opportunity to obtain and present evidence as the prosecution. While the result achieved in the Stielow case is a triumph of innocence, it is a sad commentary on our system of jurisprudence that the state was so powerless and inefficient to prevent the wrong committed by it. Stielow is free, but how can he be compensated for the torture and imprisonment which he has suffered? Not only should the state establish the office of public defender, but it should go further and provide compensation to innocent persons convicted of crime. Radical changes in our legal system are required if justice is the desired goal.—Mayer C. Goldman, New York, May 16, 1918.

Annual Report of Public Defender of Los Angeles County, California.—

CRIMINAL DEPARTMENT

The law makes it the duty of the public defender to safeguard the rights of persons accused of crime in the Superior Court who, on account of unfortunate circumstances or lack of adequate means, are unable to defend themselves. The law expressly makes it the duty of the district attorney to prosecute those "reasonably suspected of being guilty of public offenses" and prohibits him from "acting as counsel for any person accused of any crime." We have realized that the public defender's office was created for the purpose of assisting the courts in administering justice. We have not felt that it was our duty

to oppose the district attorney, but rather to co-operate with him in setting all the facts before the courts. We are glad to report that no friction has occurred and that the two offices have worked harmoniously together with the sole object of furthering the cause of justice. Our office has tried to keep uppermost the idea that justice should be done and even in criminal cases attorneys should not try to get the defendants "off" regardless of the merits. We have not asked for unnecessary delays and have not resorted to technicalities. No motion has been presented which was not necessary to protect the substantial rights of the accused. In cases where there is no question of the guilt of the accused, it is the established rule of the office that no trials should be held but that pleas of guilty be entered, thereby saving the county the expense and delay of trials.

The following is a summary of the cases handled. For the purpose of comparison we have set forth the results of cases handled by attorneys in private practice:

REPORT ON CRIMINAL CASES (ALL COURTS)

Filed Between July 1, 1916, and July 1, 1917.

Cases in Which Appearances Were Made in Court.

Felony cases filed in Departments 17 and 18.....	303
Omitting to provide cases in Departments 7, 17 and 18.....	85
Cases in Juvenile Court.....	47
Insanity cases	7
Contempt cases	1
Total appearances in court.....	— 443

Consultations in Office and in County Jail.

Felony cases	59
Omitting to provide cases.....	28
Cases in Juvenile Court.....	5
	— 92
Paroled from County Jail.....	1
	—
Total criminal cases handled in any way.....	536

Trials in Felony Cases.

Convictions	32
Verdicts guilty lesser offense (included in above).....	7
Verdicts not guilty.....	22
Jury disagreements	4
Total trials	— 58

Trials in Insanity Cases.

Verdicts "Insane"	3
Verdicts "Not Insane"	1
Total insanity trials.....	— 4
Defendants in criminal cases committed to Patton by Insanity Commission, as insane	7
Defendants in Criminal cases committed to Patton by Insanity Commission, as inebriates	2
Total	— 9
Pleas of guilty	232
Defendants granted probation	133
Cases dismissed	47

Cases off calendar	58
Cases pending and undisposed of.....	1

REPORT ON CRIMINAL CASES—DEPARTMENTS 17 AND 18

Filed Between July 1, 1916, and July 1, 1917.

(Failure to Provide Cases not included.)

	Other Attorneys	Public Defender
Number cases	472	303
Number defendants	534	333
Pleas guilty	186	202
Pleas guilty lesser offense (included in above).....	24	23
Pleas not guilty	280	87
Trials	120	51
Verdicts guilty	67	29
Verdicts guilty lesser offense (included in above).....	13	7
Verdicts not guilty	30	19
Jury disagreed	23	3
Defendants granted probation	94	92
Demurrers filed	29	..
Demurrers sustained	10	..
Demurrers overruled	19	..
Motions to set aside information filed.....	21	..
Motions to set aside information granted.....	3	..
Motions to set aside information denied.....	18	..
Motions for new trial filed.....	18	1
Motions for new trial granted.....	2	..
Motions for new trial denied.....	16	1
Motions arrest of judgment filed.....	5	..
Motions arrest of judgment granted.....	..	..
Motions arrest of judgment denied.....	5	..
Appeals taken	7	..
Number of days of court occupied by trials.....	167	34
Average number of days for each trial.....	1.391	666
Percentum of cases in which pleas of guilty were entered...	.394	.666
Percentum of cases in which probation was granted.....	.199	.303
Percentum of trials in which verdicts were not guilty.....	.25	.372
Percentum of trials in which verdicts were not guilty or jury disagreed .....	.441	.431
Percentum of cases that went to trial.....	.254	.168

(At the date of compiling this report, Oct. 1, 1917, one case of the public defender was still pending and 32 cases of private attorneys.)

Since our office appeared in nearly all of the cases in the failure to provide and juvenile courts where defendants were represented by counsel, no comparison has been made between our work and the work of other attorneys in those cases.

The foregoing comparison shows our office entered pleas of guilty in 66 per cent of the cases, while attorneys in private practice entered pleas of guilty in only 39 per cent of the cases. Only 16 per cent of the public defender's cases went to trial, while 25 per cent of the cases in which private counsel

appeared went to trial. Verdicts of not guilty were returned in 37 per cent of the cases represented by the public defender, while similar verdicts were returned in only 25 per cent of the cases handled by private attorneys. The average time occupied by the public defender in trying cases was a little less than one-half of the time required by private attorneys. By avoiding the necessity for trials and by trying the cases in half the time required by private attorneys, the public defender has saved a very considerable sum to the taxpayers.

COMPARISON WITH WORK OF APPOINTED ATTORNEYS.

It is interesting to compare the work of the public defender's office with that of the attorneys appointed by the court during the last calendar year before the establishment of the public defender's office:

	Appointed Attorneys 1913	Public Defender 1916-17
Number of cases.....	115	303
Pleas of guilty.....	71	202
Percentum of cases in which pleas of guilty were entered....	61.7	66.6
Number of cases in which probation was granted.....	31	92
Percentum of cases in which probation was granted.....	27.8	30.3
Number of trials.....	30	51
Percentum of cases that went to trial.....	26	16.8
Verdicts of not guilty or disagreements.....	6	22
Percentum of trials in which verdicts of not guilty rendered or jury disagreed.....	20	43.1

IMPROVEMENT IN METHODS OF HANDLING CRIMINAL CASES.

Our office has attempted to conduct our cases on the highest possible plane. The attorneys in the district attorney's office and those in the public defender's office are presenting their respective sides fairly, without indulging in the methods which have to some extent brought criminal practice into disrepute. Wherever possible the two offices have stipulated to ask the court to appoint expert witnesses who should represent both sides and who should be the only expert witnesses in the case. This not only saves money to the county, but results in fair opinions by disinterested witnesses. In the case of *People v. Alvarado*, charged with murder, this method was pursued and the defendant declared to be insane and sent to a state institution for the insane.

PRESENTATION OF MITIGATING CIRCUMSTANCES.

An important feature of the work of the office is the presentation of all the circumstances of the offenses in cases where guilt is admitted. Seldom a case is presented in which there are not mitigating circumstances. If the court is to handle cases intelligently and render proper judgment, it is necessary that complete information be furnished. This necessitates a great deal of work which must be carefully and judiciously performed. The granting or refusal of probation often depends upon the faithfulness with which the circumstances are presented to the court.

The case of A— might be cited as an illustration: A— was a nineteen-year-old boy who entered a butcher shop in San Pedro and purloined a ham. He was a sailor and expected to go to sea at the first opportunity. He was without funds and while awaiting the sailing of a vessel subsisted on the ham

in a dug-out on the outskirts of the town. Upon his arrest on a burglary charge, he told the court he was guilty and did not desire to disclose the names of his parents, but wished the court to sentence him immediately. The court appointed the public defender as his counsel and we urged him to tell the court all the circumstances of his life, in the belief that he had a good record and that probation would probably result. At our earnest entreaty he told us his story, giving the names of his parents in an eastern city. We wrote to the parents and learned that he was the eldest of several children, that he had left home two or three years earlier, in the desire for adventure, and that the parents had advertised for their boy throughout the United States. The father sent a railroad ticket to his old home and the price of the ham to reimburse the butcher. He told us that he would meet his son at the train with a new suit of clothes ready for him and that a warm welcome was waiting if the court should see fit to grant probation. The boy's previous record had been good and the court, upon learning these facts, promptly sent him to his parents.

OBTAINING EMPLOYMENT

In a number of cases the court has made an order that the prisoners be released on probation as soon as the public defender should obtain work for them. Many of the prisoners are penniless and upon their release from jail had no place to go and not even the price of a meal. Our office has taken upon itself the task of securing employment for every prisoner released from jail who did not have means of taking care of himself. In cases where temporary assistance was necessary we have found the means of keeping them on their feet until they obtained a fresh start. It is of great importance that these men, so often helpless without assistance, should be aided in making the new fight which is before them upon their release. This may be called social work, but it is so closely allied with the other work of the office that we have found it not only necessary but productive of good results.

CIVIL DEPARTMENT

A great many persons have found themselves without means to employ attorneys to recover sums justly due, principally for wages. In many cases the claims are so small that even if an attorney were given the total sum involved he would not be properly compensated for his services, although upon the recovery of that amount depends the bread and butter of the claimant's children. Wage earners very frequently find themselves entirely without remedy in the courts for the reason that the remedy costs more than the benefits to be derived. Our office has made it possible for every person, no matter how impecunious, to obtain justice. In civil matters our office is authorized to prosecute actions in behalf of persons financially unable to employ counsel where the demands do not exceed one hundred dollars. We are also authorized to represent such persons in civil litigation in which they are being persecuted or unjustly harassed.

The following statement is a summary of the civil matters handled during the year covered by this report:

Total number of applications for assistance.....	8,231
Applications in which advice was given on various subjects.....	3,843
Applications rejected on account of ability to employ attorney.....	1,991
Applications rejected because claims were over one hundred dollars or because of non-residence of applicants.....	403

Total number of applications rejected.....	2,394
Claims accepted for adjustment, divided as follows:	
Labor claims	1,361
Detention of personal property.....	177
Injury to personal property.....	70
Exemption from unjust attachment or garnishment.....	54
Other cases of persecution.....	4
Miscellaneous	328
<hr/> Total	1,994
Suits filed and won.....	103
Suits filed and lost	4
Suits filed and not disposed of.....	49
	<hr/> 156
Sum paid into office without suit.....	\$ 4,640.49
Amount of judgments won.....	4,914.58
Money and chattels collected out of office.....	13,628.02
	<hr/>

Total amount recovered for clients through instrumentality of the office\$23,183.09

It will be noted from the above that a very large part of the claims accepted for adjustment are for labor performed by our clients.

CASES ADJUSTED OUT OF COURT

It is the policy of the office to adjust matters without recourse to the courts wherever possible and with this end in view courteous letters are sent to the defendants informing them that the complaints are presented to us and inviting them to present their side. In most cases prompt response is made, resulting in settlement. Sometimes we conclude that our clients are at fault, but, wherever the facts justify, cases are taken to court if the defendants are unwilling to settle. It will be noted from the foregoing summary that we were compelled to file suit in a very small percentage of the cases. The office tries to see that justice is done to both parties in all of these matters.

RELEASING OF UNLAWFUL GARNISHMENT OF WAGES

An important feature of our work is the releasing of wages from unlawful garnishment. The law humanely allows a married man to retain at least one-half of his last month's wages for the purpose of buying necessities of life for his children. We find, however, that some unscrupulous attorneys and collection agencies are accustomed to levy garnishments upon wages which they well know are exempt. The result is that the wage earner, often foreign-born and ignorant, is thrown upon charity until such time as he has earned sufficient to cover the amount of the claim of his creditors. Our office tries to adjust these matters so that the creditor will receive his just due in monthly installments, at the same time enabling the debtor to maintain his family.

TYPICAL CASES

In one case a Mexican woman appeared in our office with a sick baby in her arms which she had carried to the eleventh floor of the Hall of Records, being ignorant and fearful of riding in the elevator. The wages of her husband, who

was working for a railroad company as a laborer, had been seized by a creditor and the family, consisting of several children, were without common necessities of life and the sick child needed medical attention. In attempting to release at least part of his wages we found that a collection agency had not filed suit in the name of the real plaintiff, the claim being assigned to a dummy, and the defendant was sued under the name of John Doe. The constable's office of Los Angeles Township had not served the garnishment. It was only by writing to the sheriff of San Francisco that we learned where the suit had been filed and the levy made, the notice of garnishment being directed to the San Francisco office of the railroad company. We at once released one-half of this man's wages and assured ourselves that the baby received medical attention. This case is mentioned as an example of the extremities to which some of the applicants at our office are driven.

In another case which illustrates the methods used by certain unscrupulous attorneys, a creditor wished to collect two bills having no connection, from separate parties, one for eighteen dollars and the other for thirty-seven dollars. The attorney commenced suit on both bills in one action, asking for judgment against each defendant for the total sum of fifty-five dollars. The defendants were sued under the names of John Doe and Richard Roe, judgment was entered by default and supplementary proceedings commenced. The defendant owing eighteen dollars had not been served with summons and heard of the pendency of the action only when he was served with an order in supplementary proceedings. He thereupon went to the office of the plaintiff's attorney and made arrangements to pay the sum of eighteen dollars and two dollars costs, in installments, and received the attorney's promise that no further action would be taken on the judgment. After the entire sum of twenty dollars had been paid he was again ordered to court on new supplementary proceedings. The attorney was attempting to collect the additional sum of fifty-five dollars and twelve dollars costs from him alone. Our office was obliged to sue in the Superior Court to set aside the judgment in the lower court. It gives us real pleasure to relieve the poor from this kind of persecution.

In another case a baby, which had been put to board by its mother with a private family, was detained from the mother who found herself without sufficient money to pay the small bill. A lien was actually claimed on the body of the child.

HELP FROM BAR ASSOCIATION

Our office had not been in operation long before it became apparent that there was opportunity to do a great deal of good for indigent people in matters in which the county charter did not especially authorize us to proceed. An old lady, a widow, was sent to us by the district attorney's office, who had invested her entire savings, the sum of about \$200, in the purchase of a lease of a small rooming house. It had been grossly misrepresented and her money was lost. Another woman appealed to us to help her contest in the court for the custody of her child, the husband being provided with an attorney while she was unable to secure one. So many of these people urged us to help them to secure lawyers that we placed the matter before the trustees of the Los Angeles Bar Association, suggesting that they call upon the bar of Los Angeles to volunteer their services for such cases as we were not authorized to handle yet which called for legal assistance. The trustees of the Bar Association approved of the plan and appointed a committee to receive offers from the members of the bar. As a result we have a list of about fifty lawyers passed upon by the Bar Associa-

tion as being in good standing, who have agreed to assist us when called upon. Since some of the applicants at our office are considered to be able to pay an attorney's fee the attorneys on this list are permitted to charge small fees in proper cases, subject always to the approval of this office in case any question should arise. I believe that this branch of our work has resulted in a great deal of benefit to the community. Any persons in the county can now secure assistance in civil cases before the court in any kind of a case even though entirely unable to pay the fees of an attorney. During the period covered by this report our office referred to the attorneys on this list, in alphabetical order, 1,019 cases.

ONLY THOSE WITHOUT MEANS ARE ASSISTED

The foregoing summary shows that twenty-nine per cent of the applicants for assistance were rejected, most of them being refused for the reason that they were financially able to employ attorneys. Very few apply to our office expecting something to which they are not entitled. They are sent to us from other public offices without sufficient knowledge of the limitations of the office. In most cases there is no complaint made when they are told that the office is only for those who are without means of securing the services of attorneys in private practice. We have been very careful to examine the facts of each case in order to prevent the rendition of services to those who are not entitled to them.

BETTER FEELING CREATED AMONG THE POOR TOWARD THE GOVERNMENT

There has been a feeling among a great many people that the courts were only for the wealthy and that they were beyond the reach of the poor. Such a feeling on the part of a large number of the population was not conducive to the best of citizenship. The public defender's office has allayed this feeling in Los Angeles. The courts are now open to all citizens on an equal basis and the poorest now have an equal chance to obtain justice although the claim be against the most powerful corporation.

Many thousands of poor persons in Los Angeles have found that the government takes an interest in their welfare and wants to see justice done them. It is difficult to overestimate the value of the benefits obtained by creating the proper spirit among the poor and improving their attitude towards the government.

The public defender's office of Los Angeles was the pioneer in its field, having been established in January, 1914. It was the first office to be created whereby a public officer was provided to act as attorney for the poor in both civil and criminal matters. During the four years of its existence the office has attracted a great deal of attention throughout the United States. Favorable comments made by the judges and other officials of Los Angeles have resulted in the creation of similar offices in nineteen other cities.—Walton J. Wood, Public Defender, Los Angeles, Cal., Dec. 14, 1917.

PAROLE—PROBATION

Functions of a Probation Department in a Municipal Court.¹—A study of the probation systems in other courts of the United States shows that the Municipal Court of Philadelphia is unique in that the work of the probation officers begins when suit is first brought, instead of after the court hearing. Historically, probation as we know it today developed from the system of parole of prisoners which began in the middle of the nineteenth century. Parole

¹Material prepared by the Department of Research and Statistics, Municipal Court of Philadelphia.

was devised as an alternative for imprisonment for minor offenders, or for individuals who after a term in prison, had shown their capacity for regaining their position in the community. Probation is in most of the courts today, simply an extension of this principle of parole to a larger group. The probation system of the Municipal Court had quite a different start and grew out of the practice of the Department of Public Health and Charities which, acting for the Quarter Sessions Court, maintained a clerk to receive application by deserted wives for free warrants. So many applications were made that the force was enlarged, and gradually the clerks went beyond mechanical questioning and gave attention to individual wants. Thus, a woman obviously in need of immediate relief would be referred to a social agency for help pending the court proceedings.

From the beginning of the Domestic Relations Division of the Municipal Court, the first function of the probation department was to determine not only whether the warrant should be free, but whether the warrant should be issued in any particular case. At first the statement of the woman was taken without verification and the decision made on this basis. This was soon found to be inadequate, and visits were made to verify such factors as the husband's work, wages, the address and the fact of the marriage. This extended knowledge of the individual situation soon made it apparent that in many cases the need was not so much the court hearing and suing for support as it was a chance for both parties to tell their grievance. This led to the plan of hearing the man's side of the case before bringing him into court and the ultimate prevention of all court hearings except where the voluntary system failed. The result of this development so far as the court is concerned is, first, that the judge has a shorter list of cases and can devote a correspondingly longer time to each. Then for the cases that reach him he has in addition to the brief statements made before the bar a more or less complete record of the essential conditions of the situation. This means that the case can be settled with a single court hearing far more frequently than was possible before.

Principles of the Domestic Relations Probation Extended.

As each new division of the court has been organized, the essential principles of probation worked out in the Domestic Relations Division have been applied with the modifications necessitated by the peculiar needs of each tribunal. In the women's department of the Criminal Division, the officers practically act as assistants to the district attorney in preparing paternity cases for prosecution. In these cases the procedure is as nearly like that in the Domestic Relations Court as is compatible with the still persisting requirements of the criminal process. In other kinds of criminal cases, probation officers are frequently requested to investigate the stories given by men who have been convicted, in order that the judge may determine the sentence in accordance with individual needs. The further application to criminal cases of the principle of investigation will be made as the movement for the public defender gains headway.

In the Juvenile and Misdemeanants' Divisions for boys and girls, the probation officers are the first ones with whom the young offenders come in contact and no case ever comes up for a court hearing without special preparation.

It must be remembered that while probation officers are thus granted an unusual amount of discretion, particularly in keeping the case out of court,

they can do this only by persuasion. The individual who refuses the service of the probation officer, and insists immediately upon court action, is, of course, given his constitutional right. It is interesting that among nearly 8,000 cases in which court action was taken in 1916 only 91 cases were opened outside of probation department. Furthermore, any agreement or reconciliation must be formally allowed by the court before the case is considered adjusted. Sometimes the facts are presented in summary form without the original parties being present. In other cases, the individuals concerned may appear before the judge who explains the situation.

Much of the time and effort of the probation officers is devoted to the securing of relief for unfavorable economic and physical conditions which are found to underlie most of the personal and family problems brought into court. The important feature of this work is not that service is rendered in addition to the regular court work, but that securing medical care, changed housing conditions, mental examinations, and so forth, may be the means by which the necessity for court action is obviated. This larger social service thus forms an integral part of probation. The recognition of this fact has resulted in the development of more and more complete provision within the court itself for such services as medical examinations and treatment, psychological tests, and the securing of positions. The distinct effort has also been made to have the various workers familiar with the resources of the city for all forms of social service. The Reference Book of Social Agencies, prepared by Miss Ella Harris, is in constant use in every section of the probation department.

Another feature of the wider socialization of the court has been the discovery that it is necessary to teach other city departments and private organizations, as well as the general public the objects and uses of the court. This has been accomplished in large measure by public addresses given by judges and other court officers. A course of lectures on the probation work was given during 1916 by the Pennsylvania Training School for Social Service. There have also been many articles published by court workers. One of the best ways of securing intelligent co-operation with other parts of the community has been through the holding of frequent conferences with other agencies on various aspects of the court work.

To summarize, probation in the Municipal Court means:

1. The investigations of every case to ascertain as far as possible the facts of both sides in order to determine whether or not court action is necessary.
2. The adjustment without court action on the basis of this investigation in as many cases as possible.
3. The preparation of the cases for presentation for the judge.
4. The carrying out of the judge's orders, and the continuous supervision of the case for the first hearing.
5. Very seldom does it mean punishment in itself, or the diminution of a more severe sentence.—Jane Deeter Rippin, Chief Probation Officer, Municipal Court, Philadelphia.

A Municipal Detention House.—A disused school house, located at Twelfth and Wood streets, Philadelphia, has been fitted up as a detention house for women and girls.

Upon the ground floor is a small court room and administrative offices. Each field worker has her own desk, and there is ample provision for privacy in her conferences with the girls and women. On the second story is a dormitory and several private rooms for the care of women brought in from the

street, and offices for the physician, for a psychopathic clinic, for the Bertillon records, and a suite for the superintendent's private use.

On the upper story are accommodations for young girls, and for special cases held as witnesses. Each girl of this group is intended to have a bedroom to herself, and there is a common room with a victrola, a piano, and tables for writing and games. Girls in this group are kept wholly separate from those on the story below. The furnishings of all the rooms are simple and dainty, and a home atmosphere prevails.

A woman physician is always on duty. She is assisted by two nurses. A psychologist takes charge of all mental examinations, but is not continually on duty. All who are detained are given a thorough physical examination. The physician and psychologist work together, and treatment, whether mental or physical for those who are put on probation, is continued as long as needed. Particularly cases which need salvarsan come voluntarily for treatment when they have left the institution.

The case of everyone brought into this House of Detention is promptly investigated, and as far as possible settled out of court. The trial is strictly private, only witnesses being allowed to be present. This is a tremendous advantage over the old crowded police courts where all classes of accused persons hear each others trials.

While the groups of women handled by this court cover the majority of the women offenders in Philadelphia, there remain a number of women who differ very little from these, but whose cases are still handled by the magistrates, and still others charged with such offenses as larceny, assault and battery, and murder, who are still sent to jails and police stations to await trial.

There seems no reason why the Municipal Detention Houses described above might not act as clearing houses for all women charged with any sort of crime.—Jane Deeter Rippin, Chief Probation Officer, Philadelphia, Pa.

The State's Duty to Delinquent Women and Girls.¹—It is my understanding that what is desired by the Association is a statement regarding the established reformatories for female juvenile delinquents—for girls between the ages, say, of seven and eighteen years, which is, I believe, the range covered by these institutions. I like better calling them formatories, rather than *re*-formatories, for the girls who are sent to them have not all of their habits definitely formed; they are still in the formative period of life, making it our work and likewise giving us the opportunity to assist in the formation as well as the reformation of their characters.

This underlying idea has become prevalent, for even in the naming of the institutions it has made itself evident. I do not recall any juvenile institution which carries the word reformatory in its name. The word "school" appears in its place.

At least fifteen states have institutions of the type to be described, although not all are state institutions, supported wholly by state funds.

Practically all of these schools have the cottage system, which means that they have a group of buildings, each with a capacity of from twenty to thirty-five, in which the girls live, with as close an approach as possible to an orderly, properly conducted family life. There is in each a kitchen, dining room, recreation or general sitting room, perhaps also a laundry and a play room, and a

¹Read before the Congress of the American Prison Association, New Orleans, November, 1917.

separate sleeping room for each girl, so that in each cottage all of the functions of housekeeping and of home life are carried on. This system makes it possible to fit all of the daily activities into the general educational scheme which now seems fairly well agreed upon as best for the type of girls sent to these institutions. The buildings themselves become not merely housing places, but factors in a general and well-rounded educational plan.

More specific plans for formal educational work are, however, made, either by having school rooms or school buildings at the institution or by sending the girls out to the regular public schools. The method best adapted to the needs of an institution depends upon its location, upon its proximity to good public schools, and upon the kind of girls who make up the population of an institution. For the girls who come to the New York State Training School for Girls we are sure it is best that for a period of two or three years they be kept apart from all situations which have proved a temptation to them, distracted their attention and drawn their minds from the interests and business which, at their age, should be entirely absorbing them, namely, those connected with getting an education.

The school system should be sufficiently elastic and comprehensive to meet the needs of all of the pupils and it should, of course, always be held close to its real purpose—that of teaching the pupils how to live, how to become useful citizens. Thus, in our school, we eliminate the non-essentials in book school work, endeavor to see that the girls are as well grounded as their individual mentalities will permit in things which they must know for the ordinary, every-day business of life, cultivate a taste for good literature and give them as much general information as they can absorb. We do not have self-government at Hudson, but we have clubs of the "Children of the Republic," through which, as well as in school, we may be able to teach and impress upon the pupils the principles they will need.

In industrial work, we aim to make them good housekeepers and home makers—we have cooking classes, classes in hand and steam laundry work, graded sewing classes, garden classes, many kinds of hand work, such as weaving, basketry, woodwork, book binding, metal work, clay modeling, etc. Also, the girls have singing lessons and physical culture exercises and properly directed and supervised play. Just now, like other girls and women, they are making their share of Red Cross supplies.

Lastly, but not least, they have instruction in religion in accordance with the faith and belief of their parents.

Each girl should have a careful and thorough physical and mental examination when she enters. Some of the institutions as yet are not able to have all of the examinations and tests made which, without question, should be made, but all aim to classify the girls along both of these lines and to treat them as indicated by such examinations and tests as are made. For the sake of the progress and welfare of the girls in the school, as well as for their usefulness in the future, the aim is to put them into the very best physical condition and to teach them hygienic ways of living.

Long experience with delinquent girls has convinced us that they do not begin to go wrong because they are inherently bad, because they are by nature morally depraved. Just what the causes are—physiological, psychological—in a certain number of cases, we are waiting for the specialists to tell us. But we need not wait longer to learn that youth needs protection. Not only have parents been too ignorant, too weak, but they have been too careless, too lazy,

too indifferent. Moreover, the community has been and is culpable for the things which happen to girls. It has created and permits the existence of conditions in which youth has full opportunity to make missteps. Boys and girls have an animal nature as well as a spiritual. Nerves were created and differentiated for the sole purpose of functioning in certain ways when the special stimulus they require reaches them. These activities of the nerves are all natural, physiological, absolutely non-moral. The youth, the hope of the world, ought not to be permitted in ignorance to stumble upon these truths and to learn by sad experience the laws of life. It is not the children who make the conditions under which they must live through the storm and stress period of adolescence. They become responsible for later generations, but the children of this day are our responsibility and so remain until they reach years of discretion and understanding. So we need not only institutions in which to correct form, reform, rehabilitate those who have lost their way and strayed from the path of righteousness, but we who are the units making the communities which in the end make the state, need to acquire understanding and wisdom and a determination that the results of ignorance, weakness and indifference shall not come upon the children, that the burden of mental deficiency, insanity, unstable mentality, social diseases, shall not increase, but shall grow less, need to acquire understanding, wisdom, determination and to take action that our communities be made safe and wholesome and helpful places for the development of the best in youth.—Hortense V. Bruce, M. D., Superintendent, New York State Training School for Girls, Hudson, N. Y.

Care of Wayward Girls in Massachusetts.¹—I confine myself to the methods used in Massachusetts with girls who are presumably capable of being developed into self-directing members of the community.

A girl under 17 years of age who is found guilty of offenses against the law, or who is in moral danger, may be committed by the court to the Industrial School for Girls at Lancaster, to remain under the control and guidance of the Trustees of Massachusetts Training Schools until she becomes 21 years of age. It is not intended, however, unless she is distinctly feeble-minded, that she shall pass these years in even the best of institutions. Barring ill health and defective mentality, the length of her detention will depend upon her conduct in the school. A course of domestic and academic training is arranged, which a girl of average health and intelligence can cover in from eighteen months to two years, and which wins her the right to be considered for parole.

Every month a committee of the trustees, the secretary of the board, the parole superintendent and the superintendent of the institution confer together at the school, and decide as to the disposition of the various candidates for parole. Every girl of course wants to go home, however wretched that home may be. But it is in this home that she has already failed; and when a girl first leaves the institution, experience teaches that she needs a degree of control which her own family can rarely supply. There is the possibility of danger between the factory and home; there is the danger of her losing her job and not telling, and drifting off with bad companions. There is the danger that her mother will conceal her daughter's faults from her visitor, lest she again be removed from her care. We are dealing with young girls, not with women; with girls who must learn things that should have been taught them in child-

¹Read at the Congress of the American Prison Association, New Orleans, November, 1917.

hood, and who are a curious jumble of adolescent children with adult experiences.

For the great majority of our girls, her best chance will be in some other home other than her own. But it must be the right home. It is not enough to have someone say, "This is a nice family, they will be kind to the girl." It must be a home where the employer understands the problem and will be able to anticipate difficulty, and to hold the girl's interest so keenly that she will not want to slip away. There are many types of girls to place, and the type of the girl must be considered. We try to fit the temperament of the employer and the girl together. It would be stupid to put a slow deliberate girl into a home where the employer is quick and snappy. The whole scheme of parole will be spoiled if their temperaments do not fit.

It is the visitor's job to get into close touch with the girl in the place, that she can smooth out difficulties as they arise. The visitor must see that her ward is not used as a drudge; that her health is not neglected; that she is escorted, when necessary, to the dentist and the hospital; that she spends her wages wisely, and she must be a sympathetic confidant to her ward's love affairs. When the employer's patience as at an end, the visitor must find the girl another place and yet another. If she fails seriously, the girl must be returned to the school for a further period of discipline and training, and her matron at the institution must have the courage presently to help the girl to go out on a fresh venture in a world full of temptations. Sometimes a girl whose first years on parole were a long series of discouraging episodes, finally grows into a woman and makes good.

If a girl proves trustworthy, if she gains self-reliance and self-control, we are only too glad to put her into any sort of work she can turn to with intelligence. Not infrequently a girl goes to high school and wins a good industrial record. Others sometimes go back to their family to become the comfort and mainstay of parents, and of young brothers and sisters.

Girls who lead an unblemished life during their parole, and who take their place as self-reliant and self-respecting members of the community, are granted an honorable discharge by the Board of Trustees before they pass out of its guardianship at the age of 21. An honorable discharge is reported to the court from which the girl was committed, and is made a matter of court record. Such a certificate of achievement is rightly prized.

A parole visitor, to do justice to her work, should not be expected to look after more than thirty-five girls. If, on the basis of dollars and cents, this seems an extravagantly small number, let the expense of even the best painstaking after-care be contrasted with the maintenance of one of our wards in an institution. The last published report of the Massachusetts Training Schools shows an expense of \$81,749.70 for the maintenance of some 260 inmates in the Industrial School for Girls, against an outlay of \$19,599.56 for the care of an average of 281 girls on parole. This gives a per capita cost of \$5.90 for those inside the institution against a per capita cost of \$1.34 for those outside.

The work of a parole visitor makes immense demands upon tact and patience and sympathy. It demands special training. It demands native talent for that special line of work. But for those who are qualified, it offers a rare opportunity for service and for study.—Edith N. Burleigh, Superintendent Parole Department, Massachusetts Training Schools.

Success of Probation in New York.—That the war has increased delinquency, especially among young girls, but that this increase has been offset

to a large degree by greater vigilance on the part of the probation officers of the state, is shown in the Eleventh Annual Report of the New York State Probation Commission for 1917, just submitted to the legislature.

The commission finds that the number of young girls placed on probation from the courts of the state began to increase markedly at about the time that the United States entered the war one year ago, and that the number has remained abnormally large ever since. This increase is due to greatly increased temptations to young girls about soldiers' camps and to the attractiveness of the uniform. Probation officers have been kept busy in certain localities dealing with "girl and soldier" cases. The commission points out the need for increased supervision of amusements, the prevention of the promiscuous meeting of young girls and stranger soldiers, and the immediate need for more probation officers, especially women to deal with these cases.

The probation system as a method for disciplining and reforming offenders was used in the higher courts of all but nine of the counties of the state last year and in all but six of the fifty-eight cities. It is also being used increasingly by the village judges and justices of the peace of the towns. Thirty-four counties now employ regular salaried county probation officers who are authorized by law to serve in any court in their counties. There are now 202 salaried probation officers serving throughout the state in addition to many unsalaried volunteers.

During the statistical year ending June 30, 1917, a total of 21,847 persons were placed on probation by courts of the state, an increase of 13% over the number placed the year before. The greatest increases were shown among young girls and men.

Probation was used with success for all sorts of offenses from truancy and malicious mischief to grand larceny and burglary. The system has proven its usefulness both for juvenile delinquents and adult criminals although the methods used by the officers are different in different cases. While a total of 6,820 children under sixteen were dealt with on probation during the year, more than twice as many adults were so dealt with. Seventy-six per cent of all cases placed in probation completed their probation with improvement; 13% were returned to court for sentence and only 5% were lost from oversight.

The commission believes there is a direct connection between the recent marked decrease in the population of the correctional institutions of the state, especially the reformatories and state prisons, and the steady increase in the use of probation. The population of the state prisons was almost 1,000 less in 1917 than it was in 1916.

An even greater decrease in the population was shown in the state reformatories. Better industrial conditions have contributed to this remarkable decrease, but the constantly increasing use of the probation system all over the state has probably been an even more important factor.

The commission points out the economy as well as the greater effectiveness of giving offenders, especially the younger and first offenders, an opportunity to make good under helpful supervision and without the stigma of a prison sentence. It finds that the annual per capita cost for actual maintenance of a criminal in the correctional institutions of the state is \$282.60. The actual annual cost for giving offenders probation, including all salaries and expenses of probation officers and the cost of supervision by the State Probation Commission, is \$19.14 for each probationer.

Probation among adults is used most extensively in non-support and domestic relations cases. Twenty-seven per cent of all adults placed on probation last year were for non-support. A total of \$169,501 was collected by probation officers last year and paid over to the wives and children of non-supporting husbands, \$75,000 was collected in instalment fines and restitution to injured parties.

The commission recommends:

1. The employment of efficient, salaried probation officers appointed under the civil service in every city and county of the state. Wherever possible both men and women probation officers should be employed, the women to deal with girls and women, and the male officers with men and older boys.

2. The salaries of probation officers should be increased considerably over the amounts now paid so as to attract experienced and efficient persons to this service. Probation officers should give their entire time to their work, not as now in some cases be obliged to carry on other work in order to support themselves.

3. County probation officers should be given necessary traveling expenses and clerical assistance so that they may cover all parts of their districts. Wherever possible special officers should be employed to carry on probation work in the towns and villages.

4. Clinics for the mental and physical examination of delinquents should be made available to all courts. These examinations together with the social investigations of the probation officers should lead to greater discrimination in dealing with delinquents and the segregation of those unable to take care of themselves in society.—Charles L. Chute, Sec'y, N. Y. Probation Commission, Albany, N. Y.

Proceedings of the Delinquency Section of the Commonwealth Club of California.—At a meeting of the Delinquency Section of the Commonwealth Club of California, held Thursday, February 14, 1918, at 7 o'clock p. m., the work of the section was discussed and the lines of endeavor blocked out. It is hoped that the members who have not yet engaged in specific work of the section will find in the proposed activities some line of work in which they can participate. This letter is sent also to persons interested in the subject and it is hoped many of them will be able to join in the work of the section, whether members of the club or not. It is also requested that the members get others who are interested to take part in the work of the section to the end that the plans agreed on shall not fail of execution for want of co-operation. In the scheme of the Commonwealth Club the Delinquency Section has entire jurisdiction of the subject of delinquency and everything connected with criminal law and criminology, except criminal procedure. The section was greatly indebted to Mr. Justice Wilbur of the Supreme Court of the State of California for valuable suggestions. In the discussion, which was participated in by Messrs. Oliver, Bank, Keane, Vollmer, Schneider and Kidd, the need of a comprehensive plan was strongly urged—a plan to work up to like that adopted by the city, a plan into which each separate activity would find a proper place. The following suggestions have been made:

A.—GENERAL MEASURES

1. A radical revision of the penal code, eliminating the arbitrary historical distinction between felonies and misdemeanors with the attendant consequences,

and classifying crimes more nearly in accordance with the dangerous tendency of the criminal.

2. An extension of the plan of which a beginning has already been made in California in establishing a clearing house for criminals where, after a thorough and comprehensive physical, mental and social examination of the delinquent, he would be passed on to the state institution—prison, factory, farm, home for inebriates, insane asylum, etc.—best suited to his needs and kept until it may become safe to permit a return to society. This plan was tried in Ohio, but abandoned because the enforcement of it was put into the hands of politicians. An effort, however, is being made to re-establish it there and much along the same line is being done in New York.

3. A municipal court as in Chicago and Cincinnati, with full power to handle before the same judge every question involved in a domestic relations case.

4. A more effective organization of charity work, so that duplication and waste may be prevented and the criminal and hopeless delinquent segregated and effectively controlled.

B.—PARTICULAR MEASURES

1. Public defender. This has been approved by the section in previous years, but there is some question as to the constitutionality of the bill as presented at the last legislature. Amendment thereof may be necessary.

2. The restoration of the Napa Farm for the purpose for which it was intended—a farm for first offenders. This plan has had the unanimous endorsement not only of the section but of the Club in public meeting.

3. Woman referee in connection with the juvenile courts. This plan has been highly successful in Los Angeles.

4. The jail problem. For the solution of this problem attention should be directed toward state farms, road work and other occupation, preferably under state control.

5. The treatment of the insane.

(a) A psychopathic hospital in San Francisco and possibly the taking over by the state of the Los Angeles psychopathic work. The need is most urgent for hospitals for the examination and temporary treatment of the insane and those liable to become insane. The experience of Los Angeles has shown that by preventive treatment taken in time the number of commitments to the state institutions is enormously reduced and the state thereby saved a large sum of money. The existing state hospitals could be used for this purpose in many parts of the state.

(b) Probation offices for the insane; also for the feeble-minded. These have been very successful where tried.

6. Feeble-minded. Provision for morons, particularly those who come before the juvenile courts.

7. Police.

(a) Standards of training.

(b) Classification of crimes and keeping of proper statistics.

8. Extension of the plan in the treatment of juvenile criminals of the combination of a long sentence with probation to the Preston School until twenty-one, the future then being dependent on the conduct of the criminal.

The foregoing is not intended as exclusive of other lines of activity in which anyone may be interested. In the prosecution of the work five things are necessary:

1. Collection of the facts.
2. Determination of the advisability of the proposal.
3. Drafting of the law where that is necessary.
4. Getting the law through by publicity, etc.
5. Following up the administration of the law.

It is hoped that each one will find some line of work to his liking and will immediately notify the chairman of the section what he is able and willing to do so that the organization may be completed promptly and the work started.

This notification may be made by putting a cross on the duplicate copy enclosed herewith, opposite the number of the specific work in which the member desires to participate, and signing his name.

In deciding on a program for legislative activity before the next legislature, it would be well to keep in mind the present financial burdens and to concentrate on the most necessary work that can be accomplished at the least expense.—A. M. Kidd, Chairman of Section on Delinquency, Commonwealth Club, San Francisco, Cal., May 11, 1918.

Child Delinquency and the War.—At the end of the first year of the war, it is becoming possible to see that in more than one part of the country juvenile delinquency is increasing. The figures showing increases in England and Germany during the first year or two of hostilities have already become familiar. [See "Delinquency in War Time" in the *Survey* for August 25, 1917. See also the article by Edith Abbott in the last number of this JOURNAL (May, 1918).] Apparently, the United States is having the same experience. The information at hand is scattered and meager, but suggestive.

The latest facts are supplied by the eleventh annual report of the New York State Probation Commission, recently published. The commission finds that the number of young girls placed on probation from the courts of the state began to increase markedly at about the time that the United States entered the war, and that the number has remained abnormally large ever since. This increase is due, it is said, "to greatly increased temptations to young girls about soldiers' camps and to the attractiveness of the uniform. Probation officers have kept busy in certain localities dealing with 'girl-and-soldier' cases." During the statistical year ending June 30, 1917, a total of 21,847 persons were placed on probation, an increase of 13 per cent over the number placed the year before. The greatest increases were shown among young girls and men. The commission points out the need for increased supervision of amusements, the prevention of the promiscuous meeting of young girls and strange soldiers, and the immediate need for more probation officers, especially women, to deal with these cases.

The statement has been made by A. C. Crouse, chief officer of the Court of Domestic Relations of Hamilton County, Ohio, which contains Cincinnati, that juvenile delinquency had increased 21 per cent in that county since the United States entered the war. It is interesting to note that during the first three months of 1917 there was an actual falling off of cases before the juvenile division of the court, compared with the same three months of the year before. From April 1 to November 1, however, there were 384 cases as compared with 316 during the same period in 1916. The Juvenile Protective Association reports a decided increase also.

From Chicago comes record of a similar showing. In one month the number of petitions filed for delinquent children in the Juvenile Court of Cook County was 54 per cent greater than those during the same month in 1916. The figures for four months are as follows:

DELINQUENT PETITIONS FILED

	1916	1917
April	195	232
May	196	303
June	281	326
July	234	292

The filing of a petition means in practically every case that the child appears in court. Hence, the table may be taken as substantially the same as that for cases appearing in court.

The annual report of the Children's Court of New York City shows that 14,519 children came before the court last year, an increase of 2,094 over the previous year. It was stated that toward the end of 1917 there was a perceptible increase due to the scarcity of food and fuel and the difficulty of making proper provision for some children.

None of these figures, of course, have been correlated with the growth of the communities in child population, nor do the facts show the nature of the offense committed. Some of the increase may doubtless be attributable to dependency.

This increase in New York has been offset to a large degree by greater vigilance on the part of probation officers, thinks the New York State Probation Commission. Probation was used with success for all sorts of offenses from truancy and malicious mischief to grand larceny and burglary. The system has proved its usefulness, the commission thinks, both for juvenile delinquents and adult criminals, although the methods used by the officers are different in different cases. While a total of 6,820 children under sixteen were dealt with on probation during the year, more than twice as many adults were so dealt with. Seventy-six per cent of all cases placed on probation completed their probation with improvement, 13 per cent were returned to court, and 5 per cent were lost from oversight.

The probation system was used in the higher courts of all but nine of the counties of the state last year and in all but six of the fifty-eight cities. It is also being used increasingly by the village judges and justices of the peace of the towns. Thirty-four counties now employ regular salaried county probation officers who are authorized by law to serve in any court in their counties. There are 202 salaried probation officers serving throughout the state in addition to many unsalaried volunteers.

The commission believes there is a direct connection between the recent marked decrease in the population of the correctional institutions of the state, especially the reformatories and state prisons, and the steady increase in the use of probation. The population of the state prisons was almost 1,000 less in 1917 than it was in 1916. An even greater decrease in the population was shown in the reformatories. Better industrial conditions have partly contributed to this.—From *The Survey*, May 4, 1918.

REVIEWS AND CRITICISMS

REPORT OF THE SUPERINTENDENT OF STATE PRISONS OF NEW YORK FOR THE YEAR ENDING JUNE 30, 1916. Pp. 445.

Owing to a change in the fiscal year, this report covers only nine months. The cost of maintaining the four prisons at Sing Sing, Auburn, Clinton, and Great Meadows for this period was \$813,853.91. At Sing Sing the average expenditure per inmate per day was 56.32 cents, or \$154.25 per year. At Great Meadows the average expenditure per inmate per day was 54.09 cents, of which 31.92 cents were for "ordinary support." At Clinton the average expenditure per day was 53.53 cents. At Auburn the average expenditure was 52.68, of which 28.02 cents were for ordinary support. The daily average population of these four prisons for the period covered was 5,422; the number on parole on June 30, 1916, was 2,406. The corresponding figures for the year 1907 were 3,456 daily average and 337 on parole, a notable increase in prison population and an especially notable increase in the number on parole.

At the Clinton prison a tuberculosis hospital is being built. At Clinton and Auburn the insanitary bucket system still prevails. Improved arrangements for the segregation of the different classes of prisoners, and much better provision for feeble-minded delinquents in New York are required. The medical report from Sing Sing includes the statement that the average number of men applying for treatment is less by 24 men per day, since the inmates have been allowed a large increase in outdoor privileges.

The utilization of the labor of prisoners as a partial payment from them for the expense which they cost the state and as a means of improving their health and character and general fitness for normal participation in the life of society, has been carried to a considerable length in the prisons of New York. However, this industrialization evidently might be much more whole-heartedly and progressively managed. There is a certain amount of agitation to do away with some of the less profitable and less educative indoor factory work and to substitute for it labor in the open air, either by much more extensive employment of prison labor for road work or by the acquisition of additional farm lands. Farming appears to be the most profitable of the New York prison industries. It is also recommended by the Superintendent of Prisons that as a substitute for cash payments to prisoners, reductions of sentence be offered as a reward for faithful labor. The net profits of the prison industries at Sing Sing for the nine months covered by this report were \$44,180.17; total net sales of products from this prison amounted to \$239,477.36. At Auburn the industries show a net loss of \$8,860.97 for this period, although for the preceding nine months they had shown a profit of \$14,006.20. The falling off is attributed to the increased cost of materials and to the falling off in orders for the products of that particular prison.

Prison industries at Clinton earned a net profit of \$42,917.95 during the nine months.

School attendance at the New York prisons appears to be in general voluntary; however, a considerable proportion of inmates avail themselves of this privilege. A better library equipment, both of supplementary material for the school work and for general circulation would be desirable. Of 1,582 inmates at Sing Sing, 21 had had a college education, and 19 an academic education; only 615 were married, and but 539 claimed to be abstainers from alcoholic beverages. At Clinton 62 out of 1,443 had had college or high school education.

The church affiliations claimed by the prisoners were as follows:

	Sing Sing	Auburn	Clinton	Great Meadows
Catholic	862	761	789	558
Protestant	432	486	476	331
Hebrew	259	101	150	82
Greek-Catholic	14	..	..	12
Pagan	2	..	..	..
Others .....	..	..	..	6
None	7	7	20	..

The nativity of the prisoners was:

	Sing Sing	Auburn	Clinton	Great Meadows
U. S. born.....	892	883	1,050	518
Foreign born.....	690	472	393	471

Twelve per cent of the men admitted at Auburn showed a positive Wasserman blood test and 13 per cent of those admitted were illiterate, 27 per cent of those admitted at Clinton were illiterate and at Great Meadows 181 out of 989 were illiterate.

In addition to the reports of the four prisons mentioned, this volume contains the report of the Auburn prison for women and the Valentine State Farm for women, the Matteawan State Hospital for the Criminal Insane, the Dannemora State Hospital, and the State Board of Parole. The Matteawan State Hospital appears to be in a shamefully crowded condition. The report recommends that this condition be relieved by ceasing to send paretics and others who commit minor disorderly acts that are mere symptoms of their disease and who do not reveal such dangerous tendencies as to require their commitment to an institution like that at Matteawan. Of the 103 admitted to this institution during the nine months covered by this report, 54 were natives of the U. S. and 49 were foreign born.

Illinois State University.

E. C. HAYES.

PERFORMANCE NORMS FOR THIRTEEN TESTS. New York State Board of Charities. Department of State and Alien Poor. The Bureau of Analysis and Investigation. Eugenics and Social Welfare Bulletin No. VIII. Pp. 142.

The thirteen tests here reported are part of a larger group (see Bulletin No. V) developed by the bureau to supplement the Binet-Simon Measuring Scale for Intelligence.

Several of the tests appear altogether new. In particular, attention may be directed to two drawing tests in which the child is required to illustrate by a drawing a specific scene in a story, which has just been read to it. Significant differences were found in this test between the results for children of different ages.

The total list of thirteen tests is as follows: The Knox cube test, a three-number cancellation test, a recall of objects tests, a grouping of objects test (a test of the power of association), a learning test (making use of a peg design), a story reproduction test, a syllogisms test, two drawing tests (mentioned above), a balancing nickel test (simple motor co-ordination), a motor co-ordination test involving use of peg board, a combined motor co-ordination and intelligence test using a nest of hollow boxes, an intelligence test involving a boat and three men to be got across a river (analogous to fox, goose, and corn puzzle).

All thirteen tests were tried on school groups and asylum groups. Significant differences were found between the reactions of normals and subnormals. Age norms for each test were established. The report should prove a valuable and interesting contribution to all concerned with the problem of intelligence rating.

Northwestern University.

EDWARD C. TOLMAN.

MENTAL EXAMINATION. New York State Board of Charities. Department of State and Alien Poor. The Bureau of Analysis and Investigation. Eugenics and Social Welfare Bulletin No. XI. Pp. 73.

The results of seven different investigations are presented.

(1) An examination of 2,142 orphan asylum children indicated less than 7 per cent feeble-minded, nearly one-half mentally retarded, and 2 per cent mentally advanced.

(2) An examination of 607 delinquent girls in the New York Training School for Girls proved that the great majority were of moron or border-line intelligence. It was found, however, that it was the brighter rather than the duller girls who gave the most trouble in the institution.

(3) The 194 inmates of a women's reformatory—The Western House of Refuge for Women, Albion, N. Y.—were found to consist of 17 per cent normal, 48.4 per cent subnormal, and 34.5 per cent feeble-minded individuals.

(4) As a result of examining "special classes" in various different communities the bureau recommends a handicraft class or "Craftsman School" for the backward boys of an industrial community and a Farm School for those of an agricultural community.

(5) From an examination of certain pupils in the Thomas Indian School, Iroquois, N. Y., it appeared that some Indians are as good or better than the average white child in intelligence. They have very distinctive abilities, however. This makes it seem inadvisable to try to cast them into the same educational mould as the whites.

(6) A mental re-examination of 37 asylum children ten months after the first examination indicated that the normals were more likely to raise their basal ages than were the subnormals, while the retarded or feeble-minded subjects were more likely to retain the same basal ages or to lower them.

(7) A report on a special class of eleven defective children in the City of Utica contains some interesting individual diagnoses. All of the children were feeble-minded and some had decided criminalistic tendencies.

Northwestern University.

EDWARD C. TOLMAN.

THE TWENTY-SECOND ANNUAL REPORT OF THE STATE COMMISSION
OF PRISONS OF NEW YORK FOR 1916. Pp. 587.

There were 13,537 men and 1,805 women in the New York prisons, reformatories, county penitentiaries, county jails and institutions of the city of New York June 30, 1916, according to the recently published report of the New York State Commission of Prisons for the biennium 1914-1916.

There were 5,369 men and 117 women in the state prisons; 75 women in the State Farm for Women; 1,316 men and 537 women in the reformatories; 2,395 men and 83 women in the county penitentiaries; 1,257 men and 911 women in the New York City institutions.

The number of prisoners in the institutions at the close of the fiscal year 1916 was 1,829 less than at the close of the previous year.

"The state prisons and the State Farm for Women," reads the report, "show a slight increase in population, while the reformatories, penitentiaries, county jails and New York City institutions show a decrease. Various causes are ascribed for the decrease. There have been fewer arrests in New York City and fewer immigrants have reached our shores; opportunities for employment have been great; probation is having its effect; and in no-license counties arrests generally are few."

The report contains a detailed description of every prison, reformatory, penitentiary, jail and lockup with terms of commitments, offenses, cost of maintenance, industries and policies of administration and recommendations for improvements.

Sing Sing, Auburn and Clinton prisons are pronounced insanitary, medieval and barbarous. Great Meadow is said to be the only modern prison in the state.

Sing Sing is to be used only as a receiving and distributing station. On account of its location in the mountains Clinton Prison is to be used for tubercular prisoners. A large modern hospital is being constructed by prison labor. Great Meadow is the honor prison. Prisoners are not committed to it, but are transferred to it for good conduct.

A psychiatric clinic was established at Sing Sing August 1, 1916, under the direction of Dr. Bernard Glueck.

The cost of maintenance of the state prisons for the last fiscal year was approximately \$93,000 a month, an increase over the cost per month the previous year of \$8,000.

The Mutual Welfare League has been continued at Sing Sing, Auburn and Great Meadow. At Clinton Prison, to which are transferred the incorrigibles and tuberculars, the discipline is more strict.

The earnings of the industrial prisons are reported to have shown a marked decrease. The earnings for the year 1915 were approximately \$941,000. In the year 1916 the decrease was approximately \$8,000 a month. Increased cost of supplies and shortage of orders are said to be responsible for the decrease. Great Meadow is not regarded as an industrial prison. The chief income is from agriculture.

Four hundred inmates of state prisons worked on public roads.

Schools are conducted in all four prisons. The average daily attendance for the year 1916 was 1,068. Eighty-seven per cent of the prisoners committed to Clinton Prison and 13 per cent of those committed to Auburn were illiterate. In the women's prison were 19 illiterates; in Great Meadow, 87; in Sing Sing were 252 who could not read or write the English language.

The State Farm for Women was opened for prisoners October 1, 1914. To it are committed women thirty years or older, who have been convicted of misdemeanors five or more times in the preceding two years. The capacity is 52. The average daily population is 71. There is a farm of 319 acres on which the women work.

There are two reformatories for men and two for women. Men between the ages of 16 and 30 convicted of felonies and women between the ages of 16 and 30 convicted of misdemeanors and felonies, first offense, are committed to the reformatories.

Psychopathic laboratories have been established at the men's reformatory at Elmira and at the women's reformatory at Bedford.

"In no other group of institutions," states the Commission, "have the improvements been so marked as in the county penitentiaries." The improvements consist of structural changes, new sanitary facilities and increase in number of prisoners employed in industries and agriculture.

Improvements in the New York City institutions are recorded. New industrial equipment has been installed, farm land has been purchased, an industrial superintendent has been employed and the prisoners have been reclassified and distributed through the institutions.

There appear to be changes for the better in the county jails. Several counties maintain farms in connection with the jails and

prisoners are employed at farm labor. In only six counties are the sheriffs paid per diem fees for the food of the prisoners.

The work of the State Probation Commission is highly commended as a means of decreasing the institution population and assisting offenders to rebuild their lives. The number of persons on probation at the end of the fiscal year was 13,433. Eight years ago the number was 2,378. There are 188 salaried probation officers in 34 counties.

The Board of Parole for State Prisons reports that there have been paroled from October 1, 1901, to July 1, 1916, 8,623 persons and of this number 1,901 have been declared delinquent.

The principal recommendations of the Commission are: Two custodial institutions for defective delinquents, one for men and one for women; the establishment of psychopathic laboratories; a reformatory for male misdemeanants; modern industrial equipment for the prisons; extension of farm work; employment of prisoners on the public roads; reconstruction of Sing Sing Prison; improvement of the dietary of the prisons; extension of the prison school system; co-operation between the State Probation Commission and the Board of Parole; a full indeterminate sentence law.

ANNIE HINRICHSSEN.

Department of Public Welfare, Springfield, Ill.

CONTRIBUTIONS TO PSYCHO-ANALYSIS. By *Dr. S. Ferenczi*. Translated by Dr. Ernest Jones. Boston: Richard G. Badger, 1916. Pp. 288. \$3.00 net.

Dr. Ferenczi, the author of this book, is medical adviser to the Hungarian law courts. The greater part of his work has been published in the Hungarian language. The present volume is made up of a group of articles that have been published in the German periodicals, from which the chapters in this book have been selected by the translator with the advice of the author. Dr. Ferenczi has been for many years an exponent of psychoanalysis following Freud. The volume maintains the tradition of Freudianism.

ROBERT H. GAULT.

Northwestern University.

MAN'S UNCONSCIOUS CONFLICT. By *Wilfrid Lay*. New York. Dodd, Mead & Co., 1917. Pages 318. \$1.50.

"In this book an attempt is made to show the unconscious operating in every act of our lives not merely in the actions ordinarily known as unconscious or automatic, but in that part of our activities to which we attribute the most vivid consciousness. For in a certain sense, we are most helped or hindered by the unconscious part of ourselves, when we think we are most keenly alive. Our consciousness pervades our conduct in the most minute details just as the air we breath is

forced by our blood through our tissues and it might almost be said that it is as important and as great an extent when compared with the conscious present as the air, so small a part of which we breathe is great in extent in proportion to the minute particles of it that we take into our lungs."

The foregoing paragraph expresses the motive of the author in the present volume. It is a discussion well adapted to the lay reader of that subject matter that has now, for several years, occupied the attention of many indefatigable investigators in the phenomena of the unconscious: phenomena that crop out with a special distinctness in many forms of mental abnormality. The book is not technical. It is not expected to be of service to the specialist. It will fulfill, however, its purpose among students, parents and other general readers. I mention parents, teachers and other general readers in this connection because we find, in this volume, a hundred or more pages devoted to certain phenomena of everyday life among normal folk, to mental hygiene; and to applications of the psychology of the unconscious in the educational profession. These sections deserve to make strong appeal.

Northwestern University.

ROBERT H. GAULT.

Journal of the American Institute of Criminal Law and Criminology

Official Organ of the American Institute of Criminal Law and Criminology; of the American Prison Association; and of the American Society of Military Law.

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ADDRESS THE
JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY,
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EDITORIALS

A PROGRESSIVE POLICE SYSTEM IN BERKELEY, CALIFORNIA

Something like an ideal relationship between the public and the police force has developed in Berkeley, California. The chief of police, Mr. August Vollmer, an associate editor of this JOURNAL, came into office approximately thirteen years ago, a veteran of the Spanish-American War. Police work was for him an altogether untried profession. He brought to this office an untiring vigor, supreme moral and physical courage, and an unusually high order of intelligence which always carries with it a far vision or imagination and the practical sense needful to realize visions. In this period he has become intimately familiar with the best literature relating directly and indirectly to the work of the police and to criminology in general. Such a degree of public confidence has been established in the Chief that frequently parents and teachers take to him personally their troublesome youths in order that they may have his advice as to their treatment, and under his initiative a psychopathic clinic, with volunteer physicians in attendance, has been established in the city for the service of the public schools and the police department. In this clinic every arrested person who is in the least degree suspected of any form of alienation receives an examination and diagnosis, and many others are induced, through the friendly mediation of the police officials, to go to the clinic voluntarily for examination. Through this agency many cases of mental alienation, acute and chronic, such as those referred to by Drs. Murray and Kuh in their article in this JOURNAL on "A Psychopathic Laboratory in the Chicago House of Correction" (Vol. VIII, No. 6), have been transferred to institutions where they can be properly cared for until cured, which in many cases means permanent detention.

Another outstanding feature of the Berkeley police organization is the police school which was fully described in this JOURNAL (Vol. VII, No. 6) where the complete curriculum may be found. The course of study is estimated to require three years for its completion. The class holds daily meetings of one hour's duration throughout the year and pursues but one subject at a time until it is finished. The course is comprehensive. It includes subjects that have a direct bearing upon police work such as Evidence, Methods of Identification, and

Police Organization, and others that have less direct application, such as Civics.

The operation of the school is almost without cost. Members of the state university faculty and other public-spirited persons volunteer their service as instructors.

A selected group of policemen are in regular attendance. Once each week all the members of the force who can be spared from their posts are brought together to hear a lecture upon some phase of the policeman's profession. Mr. Vollmer believes that on the whole the larger the intellectual background of the policeman the better public service he is able to render in his daily occupation.

This sounds "high brow" to the majority of police officials, but the fact is that Berkeley has a most effective police service. There are only twenty-eight men in the whole force; a ridiculously small group when compared with that employed in many cities of half the size of Berkeley—a city of about 65,000 inhabitants. During Chief Vollmer's thirteen-year administration, while the population of the city has trebled the police force has been reduced from thirty-two to the present number, and in the same period the number of complaints of serious offenses in the city has been reduced by approximately one-half. In 1907 there were thirteen special policemen, privately employed, in the city. At present there are only four and two of these are engaged solely to turn lights on and off, to adjust awnings, and to do other chores in the business quarters of the city.

In this connection it should be recalled that Berkeley is not a city isolated from contagions of crime such as are abroad in many large municipalities. It is adjacent to Oakland with its population of approximately 225,000, and is directly across the bay from San Francisco with more than a half million inhabitants, and, by electric railroad and water, but a half-hour distant from the main business and residential centers of Berkeley. This city, with an ineffective, unintelligent police force could easily be over-run by the social dregs of surrounding districts. Even the tramps shun the city.

Every member of the force is required to own a gasoline-driven automobile and to operate it in his daily work on the streets. The city pays him \$27.50 in addition to his monthly salary and supplies him in addition with gasoline and oil. This enables him to purchase and maintain a durable car. He has a fixed beat, but covers it differently every day. Mounted as they are, the whole force, no matter where they may be in the city, are controlled by an ingenious signal system

and in a few minutes at any hour of the day they can surround any block from which trouble is being reported.

Each car is equipped, not only with the usual policeman's implements, but with a rope and hook which may be useful in assisting the fire department and in giving a lift to stalled teams and dead cars; with a jack by which the officer may give aid to the driver of a broken-down truck or what not, and with first aid for the injured materials as well.

While organizing and administering the system in Berkeley Chief Vollmer has been able to wield a very great influence in public welfare organizations throughout the state of California, and to take an effective hand in directing legislation for the elimination and control of crime in the state. The State Bureau of Identification owes its existence to his genius. He has taken an active hand in the development of instruction in criminology in the state university in Berkeley, and in his last report he declares his hope that soon our future police officers may receive from the universities of the land the training they need to fit them for their responsible positions. It is implied that then there will no longer be a need for police schools organized within municipal departments.

The organization in Berkeley is one striking indication among others that we are on the threshold in America of the era of scientific police. Here is a system that is equipped with all the modern appliances that science affords for photography, finger printing and measurements; for keeping complete records of all this data and of the *modus operandi* of criminals, and for the professional instruction of policemen. At the same time the department takes the lead in forming public opinion and in initiating movements for public welfare. All the while the department works effectively.

For generations we in America have, in many respects, labored under the disadvantage of our extreme individualism. This expresses itself, among other ways in our attitude toward the police forces. We are inclined to look upon them as at least a potential interference with individual privileges and to resent even an occasional advance on their part, toward an official or semi-official relationship with persons who are neither charged with crime nor under suspicion, even though such an advance may clearly be in the interest of public welfare. Yet there are known to the police in every municipality many persons who are a public nuisance, at least potentially, by reason of their near-incorrigibility and evil associations, or because of gross defects in personality such as may be apparent even to the casual observer, or be-

cause of both of these facts. No official or private citizen in any community knows these characters and their ways better than the police. If we were less sensitive than we now are on the point of our alleged individual rights and privileges the police could do much more than they are now doing to help us over some of our social disabilities. Responsibility for improvement rests both upon the public at large and the police, but upon neither side alone.

ROBERT H. GAULT.

THE CRIMINAL IDENTIFICATION BUREAU

Wherever police departments are maintained the officials in charge have recognized that the identification bureau is a very important branch of the police organization. They have learned from experience that the delinquent changes his demeanor toward them as soon as he learns that his identity is known. When offenders are able to conceal their identity they are defiant, non-communicative, and frequently combative, whereas, if they are shown by the identification officers that their previous record is known the defiant attitude vanishes, and the hitherto silent and sometimes combative suspect is quite a talkative and congenial sort of fellow, ready to tell all he knows about himself, his associates, and his fence. Moreover, he frequently furnishes valuable information concerning the whereabouts and activities of others who are engaged in unlawful occupations.

The police have learned also that the identification of prisoners facilitates criminal procedure. Instead of spending days interviewing witnesses, securing evidence, and later prosecuting the case in court with prospects of a long, tedious trial, the matter is completely disposed of in a few hours, if the prisoner is convinced that his record is known. He is usually willing to waive all of his rights and enter a plea of guilty as quickly as the legal machinery will permit him to do so.

Identification bureaus are useful also when it is necessary to compare finger-prints found at the scene of the crime with finger-prints that are filed in the police department. Numerous delinquents have learned to their sorrow that identification was quick and certain when their finger marks have been discovered by the officers in the vicinity of the crime.

Photographs of prisoners pasted chronologically in photograph albums furnished the only means of identification for many years. Later additional albums were added in which were filed photographs of specialists in various criminal occupations, such as pickpockets, safe

burglars, bunco men, etc. In large cities the number of the photographs increased rapidly and many hours and even days were spent in search of the criminal record of the suspect, often without result.

In 1882 Dr. Alphonse Bertillon was made chief of the Paris Identification Bureau and introduced a new method for the identification of delinquents. This system is divided into three parts: the anthropometrical, which consists in measuring with calipers some of the most characteristic dimensions of the bony structure of the human body; the descriptive, which is the observation of the bodily shape and movements, and even the most characteristic mental and moral qualities; and finally, the signalment by peculiar marks, which is the observation of the peculiarities of the surface of the body resulting from disease, accident, deformities, or artificial disfigurements, such as moles, warts, tattooings, etc. Bertillon's fame spread throughout the police world and his system was adopted by most of the important cities in this and other countries.

Finger-printing as a means of identification is much older than the other two systems, namely, photography and anthropometry. While it is true that the police have only within the last few years recognized the importance of finger-prints, the Chinese for centuries past have used the papillary lines on the tips of the fingers for identification.

The finger-print system is being substituted for Bertillon's anthropometry system for the following reasons: first, the cost of the Bertillon system is greater; second, longer time is required to take measurements; third, errors in measurements are common, frequently rendering the record useless. In considering the advantages of the finger-print system as compared with the Bertillon we note: first, apparatus required is comparatively inexpensive; second, the experienced person can take, classify, and file the finger-print record in a few moments; third, errors in classification or filing are very rare.

The two best known methods for classifying finger-prints are the Vucetich and the Henry. In both systems the ten fingers are used for filing and classifying. The single finger, however, is sufficient for identification. Finger-prints are taken from the third phalanx. Henry's classification has four types: arches, loops, whorls, and composites; while Vucetich divides his types as follows: arches, internal loops, external loops, and whorls. All other methods are modifications of the Vucetich and the Henry systems. English and United States police organizations use the Henry system; South American countries use the Vucetich system; both systems are used in Europe, Asia, and Africa.

A new system for the identification and detection of delinquents which is being looked upon with much favor is the Modus Operandi System devised by Major W. L. Atcherley, Chief Constable of West Riding of the Yorkshire Constabulary. This system is briefly described by Mr. R. B. Fosdick in the November, 1915, issue of this JOURNAL.

The Modus Operandi System is intended to supplement other identification systems now in use. Whatever the cause, it is a fact that numerous delinquents operate in a manner peculiar to themselves. One man will enter a home by forcing open a side window with a jimmy, while another will use pass keys to enter a rear door. Some thieves steal jewelry, while others confine their attention entirely to silverware. A burglar who enters a home at night seldom operates in the daytime and the daylight burglar seemingly prefers not to take any chances at night.

While the old photograph method was useful in determining the identity of individuals responsible for particular offenses, it was first necessary to find a witness who could pick out of the many thousands of photographs the one which resembled the criminal operator. Every experienced identification officer can testify that mistakes in identity of offenders by photographs are not uncommon, and many innocent persons have suffered temporary imprisonment as the result of faulty identification; nevertheless, photography plays a very large part in the identification of delinquents. But the investigation or identification officer feels better satisfied when he is fortunate enough to secure finger-prints at the scene of the crime. There is then no doubt in his mind as to the guilt or innocence of the suspect.

Thieves may disguise themselves in such a manner as to prevent their identification by untrained persons; they may not leave finger-prints behind them at the scene of their crimes, but it is almost impossible for them to commit any crime without leaving behind a most important clue, and that clue is their method of operation. We may, therefore, expect that in the future more attention will be given to the detection and identification of professional criminal operators by the Modus Operandi System.

Only unimportant cities or cities whose inhabitants are lacking in civic pride are without identification bureaus. The same may be said of the several counties in the United States. County bureaus are growing in number each year. Sheriffs and chiefs of police, recognizing the difficulty which beset them in detecting, apprehending, and identifying the migratory crook, are urging the establishment of state

bureaus of identification which will serve as clearing houses for crime records. A brief outline of the work performed in the state bureau will illustrate its usefulness. The finger-prints of persons charged with a criminal offense anywhere in the state are sent to the state bureau, where they are filed without delay, and when identifications are made the previous record of the accused is sent to the office from which the record was received. Reports of crime where property has been obtained by theft, fraud, or violence and of all felonies are forwarded to the clearing house where they are indexed according to the locality and method of operation. A pawnshop record file is maintained in some of the state bureaus wherein are filed all of the articles reported stolen, or pawned, or sold in second-hand stores. Every article, excepting those which already have numbers such as watches and revolvers, is given a numerical value by the decimal system, and by using different colored cards to distinguish stolen property from pawned and sold property, a large amount of stolen property is recovered yearly.

At the last convention of the International Association of Chiefs of Police a committee was appointed to visit Washington and place before our national law makers plans for a National Intelligence Bureau.

The plan embodies all of the features of the state bureau, including finger-print, Bertillon, and Modus Operandi systems of identification, pawnshop and stolen property files, delinquents' history file, and English descriptive file.

Not only would a national intelligence bureau identify habitual offenders, locate stolen property and persons wanted for crime, but would, in addition thereto, furnish life histories of recidivists, invaluable to the prosecuting officer and psychopathic laboratory. Most important from the viewpoint of crime prevention is the influence such a bureau would exert in promoting uniform and better methods of police procedure, standardization of record forms, and a healthier spirit of co-operation between federal, state, county, and municipal public safety organizations.

AUGUST VOLLMER.

PROCEEDINGS OF THE ANNUAL MEETING OF THE INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY.

At the annual meeting of the American Institute of Criminal Law and Criminology, held at Cleveland on August 26, the following officers were elected for the ensuing year:

For President: The Honorable Hugo Pam, Judge of the Superior Court, Chicago, Illinois.

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For Members of Executive Board (term expiring 1921): James Barbour, Illinois State Senator, Chicago, Illinois; James Bronson Reynolds, Former Assistant District Attorney, New York City; F. Emory Lyon, Superintendent Central Howard Association, Chicago, Illinois, and Prof. James H. Tufts, of the University of Chicago.

In the present number, we are publishing the address of the retiring President, Dr. George W. Kirchwey, the report of the Committee on the Teaching of Criminology in Colleges and Universities, the report of the Committee on Drugs and Crime, and that on Probation and Suspended Sentence. Further reports and account of the proceedings will appear in our next number.

On September 25, a meeting of the Executive Board was held at the University Club in Chicago, at which the financial condition of the Institute and the Journal came forward for discussion. A committee on Ways and Means was appointed, composed of the following named gentlemen: The Honorable Hugo Pam, President of the Institute; John B. Winslow of the Supreme Court of Wisconsin; Justice Orrin N. Carter of the Supreme Court of Illinois; Mr. James Bronson Reynolds, Former Assistant District Attorney of New York City; Senator James J. Barbour of the Illinois State Senate; Colonel John H. Wigmore, Dean of the Northwestern University Law School, and Judge Advocate U. S. Army; Mr. F. B. Crossley, Secretary of the Northwestern University Law School; Professor Robert H. Gault, Northwestern University. This committee was instructed to prepare a letter and whatever other devices may seem useful in a canvass for additional members in the Institute and subscribers to the Journal.

A resolution was introduced by Mr. F. B. Crossley, providing for the office of Executive Secretary of the Institute, and placing this office in the hands of the Managing Editor of the Journal of the Institute. The resolution carried unanimously, and was so ordered.

There was general discussion of the personnel of Institute committees. Final decision as to appointments was deferred for a few days. Announcement will be made later.

ROBERT H. GAULT.

PROCEEDINGS OF TENTH ANNUAL MEETING OF THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY¹

PRESIDENT'S ADDRESS

GEORGE W. KIRCHWEY²

It is a truism to say that we are gathered here under very unusual circumstances, and if some of you have an impulse to be discouraged because of the comparative smallness of our initial attendance, you ought rather to congratulate yourselves and the Institute that so many men have got through this war barrage into this isle of comparative safety, for a few hours' conference with regard to the problems to which the Institute of Criminal Law and Criminology devotes itself. Many of the men upon whom we usually depend to lend color and interest to our proceedings are necessarily absent today on war business. I have hoped and have had some reason to hope that the father of the Institute, Col. John H. Wigmore, might succeed in getting away from his accumulating duties in Washington to be with us and deliver the annual address this evening. However, even though some of the usual features of our meeting will be absent, we shall have some novel things. The United States Government Medical Service probably will be represented at our afternoon meeting by two speakers who were placed on our program at the request of the government. One of them is Lieutenant Buchanan, who will describe in some detail the ideals and the methods of the campaign which the United States Government is waging for the protection of the health and general efficiency of our troops both in this country and abroad, and Miss Martha P. Falconer, of Pennsylvania, has been appointed also by the same department of the government to give us the fruits of her recent observations throughout the country. And we shall expect those who are gathered here at our sessions to contribute from their own experiences, either by way of discussion of topics under consideration, or by way of the initiation of new matters that we may properly consider.

It is the first function, possibly not a very long drawn out one, for the President to deliver the annual address. He has, by tradition,

¹Cleveland, Ohio, August 26, 1918.

²Retiring President of the Institute. Former Dean of the School of Law in Columbia University.

to concern itself with the progress of legislation and experience in the field of criminology and penology during the past year, but a survey that I have made of the addresses delivered by previous presidents, shows me that that tradition has been honored more in the breach than in the observance in the past years, and if I make my references to the achievements of the past year merely incidental and fleeting, you will understand that I have good precedents back of me.

In reading lately Morley's recent volume of "Recollections," I was greatly struck by a story which he tells of a breakfast at Gladstone's house, held in the early nineties, about 1892, at the time when the Liberals were again at the point of being temporarily and for a short time enthroned in power, and at that breakfast not only was John Morley present and several other men of distinction, but Ruskin. Gladstone was in his happy and idealistic vein, and he made the remark that he was old enough now to take the general survey of the course of human progress as indicating the aims of the liberal mind in the emancipation of humanity, and he said he saw three great transcendent aims of liberal effort. One of them was to make the treatment of prisoners more humane and considerate; the second was to strengthen the sentiment against international war; and the third was the work for the abolition of slavery. I may say, parenthetically, that Ruskin in his whimsical way said "I don't believe that the treatment of prisoners should be more humane, and I am not against war, and I am not against slavery," but that is quite by the way. It is not Ruskin's attitude that counts, but the attitude of the great leader of liberalism, of Gladstone, and apparently of John Morley, the great bulwark of liberalism for nearly two generations, who quotes Gladstone's remark with apparent approval.

Now, I take it that Gladstone, in speaking of the amelioration of the condition of prisoners on grounds of humanity and considerateness, was fairly typical and representative of his age, as well as of the political movement of which he was the leader. From Howard and Romilly down to our own time, the governing motives in penal reform have been humanitarian sentiment. And A. V. Dicey, in his remarkable work on "The Relation of Law and Public Opinion," points out almost the decade in which the humanitarian influence began to be felt before the middle of the last century, and how, little by little, it began to modify our criminal law and procedure. The marked amelioration in the treatment of prisoners in let us say the last three generations, while it still leaves much to be desired has, I think I may safely say, been due almost wholly to this sentiment. The all but com-

plete disappearance of the death penalty, administered a century ago for a multitude of offenses; the abolition of transportation for crime; the doing away with mutilation, branding, and, almost everywhere, of the whipping post; the reduction of the length of sentences, with the statutory prohibition of cruel punishments in prison, all are, like the growing detestation of war and of slavery, the fruits of the increasing sensitiveness to human suffering.

This sentiment, I think I may venture to speculate, has been reinforced in the western world, where it has particularly flourished, by the growth of democracy, involving as that does a new sense of the equal value of all men and the sacredness of life and liberty. Supplemented by certain rational considerations, this humanitarian sentiment has also been the basis of the growing emphasis on the reformation of the wrongdoer as the end of punishment, and of the recognition of the reformability of young men and children, and ultimately of all or nearly all offenders. Hence we have the suspended sentence, with probation, the indeterminate sentence with parole, and specialized institutions of a distinctively reformatory character for children and for young people. This movement, into which such a mass of generous reforming effort has been thrown, bears the aspect of a great tide of human betterment. The mitigation of suffering has seemed to us not only a desirable goal of human effort, but a sufficient end in itself; nor has the fact that after all this effort crime remains a constant quantity in our civilization, and that the objects of our humane intentions have not been materially bettered, these facts have not served to shake our faith in the beneficence of the process. It is true voices of doubt and protest have not been lacking, ranging from the drastic utterances of Mr. Justice Fitzjames Stephen, in his *History of the Criminal Law in England*, deploring the sentimental humanitarianism of the time as tending to weaken the bonds of organized society and to encourage rather than discourage the prevalence of crime—ranging from Mr. Justice Stephen, I think, down to our own New York Governor Whitman who, a year ago at Buffalo, at the conclusion of Mr. Osborne's second term at Sing Sing, congratulated the State of New York that the era of sentimental prison administration in New York was at an end and that the era of iron discipline had set in. And then, along with this we have all the way along the stiff traditional attitude of the bench and the bar in its resistance to many of these innovations on which we are wont to congratulate ourselves and the community, and particularly upon their continued resistance to the abolition of capital punishment in the few cases in which capital punish-

ment is deemed by the community at large an appropriate remedy for crime.

And now, upon all this, comes this war which has engulfed the whole civilized world, and which lifts us up out of our squeamish abhorrence of suffering into that clearer atmosphere where the higher values of life appear. The sacredness of life is swallowed up in the higher sacredness of spiritual values, the integrity of human society, liberty, justice; and it is not only the volunteers who in the first instance went to the front, it is our American community in general, like the European community fighting on the same side, which has come to count life as nothing in comparison with those higher values for which life is freely thrown away.

A. V. Dicey has shown, in the book to which I have previously referred, how ephemeral are the influences which govern our social action and determine the legal frame of our civilization. The tide that flows today in full volume may ebb tomorrow, and it may fairly be doubted, at least the question may fairly be raised, whether this humanitarian sentiment which has been the conspicuous feature of the progress of the last two or three generations, in criminology and in many other fields of human endeavor, can be depended upon to carry us on indefinitely in the same course. We hear much talk these days about the new world which is to emerge from the ruins of our old civilization at the close of the war. It would be a bold man who would predict with any degree of confidence what the outlines of that new world will be. There are many who believe that the new world will be hardly distinguishable from the old, in accordance with the old French maxim, "The more things change the more they are the same," who dwell upon the fixity and imperturbability of what they call our human nature; and yet there are more of us, especially the aspiring spirits, especially that liberal element in our progressive life to which I referred at the outset of my remarks, there are many of us who hope and who believe, with a kind of trusting faith, in a better order to emerge out of the old order. Whether we shall have an era of settled peace or not, whether we shall have an international order which shall be adequate to avert or prevent hereafter such catastrophes as the present, is purely a matter of speculation. However, a few things seem to be emerging with sufficient definiteness and with sufficient clearness to justify us in a not too exact and concrete prophecy. One of them is the rise of the working class to new influence and to new power, a remarkable change, from the English indications, to a new sense of national and international responsibility. Signs are not

wanting, even in our more settled communities, let alone Russia, of the emergence of a new spirit on the part of what we are sometimes pleased to call the proletariat, of something like acquiescence in the claims of that element in our population.

Then again, in the second place, we see a strong war movement in the direction of state socialism, the taking over by the organized community, through its official and political agencies, of more and more of those operations of society which have heretofore been deemed the special prerogative of individual initiative. Doubtless much of that will last. We can hardly believe that we shall go back in all respects to that era of unrestricted or almost unrestricted and indeed of state-encouraged competition.

Then again, there is a possible revival, on a large scale, of religion, in the sense of faith in an overruling Providence for better or for worse. I have recently been brought into contact with some real leaders of thought in England and in Scotland, men like the celebrated Professor George Adam Smith of Aberdeen University, and a very distinguished representative of a leading London daily, both men who have spent much time among the British troops in France and Belgium, and who are or should be familiar with conditions in Scotland and in England; and those men have both expressed themselves as clearly convinced that we are in the initial awakening stages of an era of faith which may well reproduce the all but universal submission to a divine Providence of those earlier ages of faith which have become a dim memory in history. To a greater or less degree we may conceive that all of these tendencies will work themselves out in practice and to a greater or less extent remold not only our conceptions of life but our institutions—the rise of the working class to power, a tendency to state socialism, a revival of religion.

And yet let me call your attention to the fact that none of these makes necessarily for a more tender or sensitive humanity. I am examining, you will bear in mind, the probability of the continuance of this wave of humanitarian sentiment which has gone on apparently with increasing volume for now nearly a hundred years.

Is there not something to be said for the view that this war will, in addition to depreciating the value of mere life as compared with the great social values which lie beyond the mere art of living, that this war will, in addition to that, do a great deal to destroy our sentimental reverence for life and our sentimental abhorrence of human suffering? We are becoming dulled already to the daily record of human sufferings even when they strike very near to our own hearts.

We count the disasters of a campaign as nothing, compared with the gain of a few rods or a few miles by our forces in the course of that campaign, and we read the most heartrending revelations of the incredible sufferings which this war brings, both on the battle line and to those away back of the battle line, the women and children; and we read even of those unspeakable atrocities in Armenia with scarcely a quiver of the eyelid or an additional throb of the heart. We are becoming inured to human suffering; and if we, at this distance from the battlefield, are becoming inured to it, how much more will those millions of men who survive the ordeal, to whom the shedding of blood and the sight of death and horrible mutilation and suffering are a part of the daily casual experiences of life, how will they feel in respect to all this sentimental regard for the sacredness of life and the wickedness of subjecting a convict to punishments of a rather old-fashioned sort? May we not expect that this tide of humanitarian sentiment upon which we have so generously and I may say so exclusively depended for the progress that we have made in our department of study, may we not at least fear that that progress may not go on in the full flood in which it has gone on in the past? That even if we do not revert to a condition of callous indifference in regard to those matters, and that certainly is not expected of this generation, the sentiment will have lost something of that keen edge which has driven so many of us into the service, let us say, of the prisoner, and which has found for us so much popular support wherever we have made the right appeal? Is there any reason to question, that is to say, whether we can depend for the future as unreservedly as we have depended in the past, upon humanitarian sentiment as an all-sufficient influence to bring about the reforms that we have deemed necessary?

As to this, we can only hope that that sentiment will not abate, but that it will rather grow in strength in the future. But however that may be, the failure of humanitarianism, to which I have previously referred, to solve the problem of crime, either by reducing its volume or by restoring the wrongdoer to a useful position in society, makes it imperative that we call other forces into play.

Now, I am not the first to discover the imperative necessity of calling these other forces into operation. It was for this reason that the American Institute of Criminal Law and Criminology was founded, not to explain humanitarian sentiment, but, by the study of the criminal and of his social environment, and by the study of our legal relations to the criminal and to his punishment, to direct the informing impulse of the community to rational social ends. Now, after ten

years of not very fruitful effort, we find ourselves in alliance with potent forces, the twin newborn sciences of psychology and psychiatry, and a new, more intensive and intelligent social study of the life and instincts of the criminal. These new studies, to which we must now more and more devote our attention, will serve us in two distinct ways. First, they will throw light on the causation of crime, and thus, for the first time, will make possible the correction or suppression of criminal tendencies before they have become fixed in character. Secondly, they will give us a new technic, a new methodology of dealing with the criminal in confinement. We have heard a good deal in the past, for nearly a generation, of the individualization of punishment, of the need of adjusting the punishment to the criminal rather than to the crime, but that has heretofore been a vision of desire rather than, as it has now become, apparently, I say it hopefully, a realizable end.

As to the first of these two ways by which this combination of sciences may aid us in our work, the psychiatric and social clinics established in recent years in a few of our juvenile courts, perhaps most notably in Chicago and Boston, are showing the way. This work must of course be carried farther back, into the schools or even into our bureaus of vital statistics, in order that the stream of criminality may be diverted at its very source. That is what we may perhaps call the preventive side of the new criminology.

As to the second, or curative function, a study of the experience of Sing Sing prison during the last three years will give direction to our effort. Many of you have doubtless been made familiar with the results of Dr. Glueck's studies in Sing Sing. I have the remotely reflected glory, if glory it be, of having been concerned in the creation of the psychiatric clinic at Sing Sing prison and in the selection to fill the post, of the man who has done so much to throw light upon the problem of the ordinary state prison inmate. You who have made yourselves familiar with his writings will recall that Dr. Glueck's conclusions based upon the consecutive study of 660 admissions, without any selection or discrimination, that of the population of Sing Sing prison apparently nearly 60 per cent., some 59 per cent., were not normal, were either abnormal or subnormal, half of them probably mentally defective in such degree as to be practically irresponsible, twelve years of age and under mentally; the other half divided unevenly between those whom the psychiatrist classes as psychopathic and those whom he classes as insane, were all of them either continuously or occasionally quite irresponsible for their acts. In other words—let us be conservative—upwards of one-half of the popula-

tion of Sing Sing prison is made up of persons who are *non compos*. They should not be held responsible by the law for their acts on the presumed ground of their capacity to choose between the right and the wrong, and in addition to that they constitute a wholly new problem of management and of administration for the person who has the custody of those persons after they have been committed for crime.

There remain, perhaps, forty or fifty per cent. of others, who are not covered by Dr. Gluck's observations. When I asked our eminent and adventurous psychologist of Columbia University, Dr. Thorndike, where we could get good studies dealing with that element in the criminal population which is not or can not be classified as abnormal or subnormal to a marked degree, he smiled and said I must look to the prison administrator for information of that kind, the thoughtful prison administrator. He said, "I don't see how our professional psychologists can help you very much."

Well, then, may I give some of my own personal observation during the brief three-quarters of a year, during which I was connected in a responsible way with Sing Sing prison? I came to the conclusion that a comparatively insignificant fraction of our community was made up of innocents, like you and me, or ordinary folk who have under the stress of peculiar temptation fallen from grace just once and who had all the punishment they required when the policeman had laid his hand on the arm of the offender, and told him he was wanted at headquarters. The casual offender, as we curiously enough call him, the accidental offender—neither one of those terms is of course accurate—the kind of offender I have described does not constitute a part of the problem of the criminologist. He belongs perhaps in the domain of the moralist or of the social reformer generally, not in yours or mine. I venture to say that it is exaggeration to say that anything like ten per cent. of the population at Sing Sing was made up of people of that entirely decent sort; probably five per cent. would be very much nearer the mark. Some of these were mentally defective, some of them were very, very queer, psychopathic or insane. But let us say that we have some forty per cent. of the present population which does not belong to this margin of virtue on the one hand, and which is not psychopathic, insane, or mentally defective on the other hand, but are almost entirely persons who have perhaps mostly from childhood led vicious lives. We must not be deceived by the fact that they are rated in the prison records as first offenders. There was wisdom in the remark of the old offender I met at Sing Sing, when I asked him as to the trustworthiness of an old crook, nearly seventy years

old, who had spent most of his life in the prisons of this country. I asked him as to his trustworthiness, and he said, to me, "Warden, you can always trust an old thief. They are the petty larceny fellows who haven't got any honor or principle about them that you want to look out for." And my subsequent experience in Sing Sing prison convinced me that there was more than a modicum of truth in that remark. The petty larceny fellow who is put in the state prison for a felony for the first time and rated as a first offender, and therefore, according to our law, presumably reformable, is very apt to be a tougher proposition, from the point of view of reformability at any rate, than is the old thief who has some honor or principle about him.

What shall we say then of that mass, forty per cent. or upwards, of the state prison population, made up of people who have become, through years, habituated to lives of ill-doing, vice shading into crime, developing into graver and graver crime; that part of the prison population that is not mentally defective for the most part; that is not insane or psychopathic; congenitally normal persons, we may say, who constitute a part of what we call the criminal class, who are prone by disposition, however, it arose to commit acts that we characterize as criminal?

I have already given you a clew to my interpretation of that group. I found it to be composed, for the most part, of young fellows, because nearly all the members of a state prison population are young, at Sing Sing fifty per cent. twenty-five years or under; eighty-odd per cent. are thirty years or under. They are young fellows who have from childhood, babyhood in many cases, led neglected and then vicious and then criminal lives. Again and again I have talked with a first offender, or a second offender, or a third offender, as the case might be, and found that same invariable history, a neglected childhood at the age of five in one case, at the age of eight or nine or ten in many, in many cases the Protectory, and then, after a few brief months of freedom, the House of Refuge on Randall's Island, and then Elmira Reformatory, and then Sing Sing prison; and after all of their experiences in this curriculum maintained by the State of New York for her erring children, the boy or man has wound up at the age of twenty or twenty-five in Sing Sing prison. The problem there is perhaps not a psychiatric one, but is obviously a psychological and sociological problem, both from the point of view of causation and from the point of view of remedy.

Now, dealing with the matter of remedy, the problem presented itself to me as primarily one of re-education. In the case of those

who are mentally defective, a more difficult process of education, but not an impossible one; in the case of those who are psychopathic or insane, partly a problem of education, and partly of mental medicine. But in the case of the great body of inmates, perhaps not too young to be made over, of a rather long and careful study and process of new education in new habits which would crowd out and so suppress the old and vicious habits which had landed the possessors of them under my jurisdiction in Sing Sing prison.

Our recent attempts to bring about a solution of the problems, have some of them been of a very dramatic sort? The George Junior Republic, Calvin Derrick's similar experiment in California, Mr. Thomas Mott Osborne's striking experiments at Auburn and at Sing Sing prison, radical extensions of the honor system in Colorado, in Montana, more grudging but still instructive experiments in that system in Massachusetts, in New York and in New Jersey and elsewhere, are all of them, I will not say sentimental, because that word has a kind of vicious implication as we commonly employ it, almost wholly based upon humanitarian sentiment. All these experiments have been aided by that uncommon quality that we call common-sense, but which at its best falls something short of scientific doctrine or scientific knowledge. None of these experiments are based upon a thorough-going mental, physical and social study of the individual. These are efforts to deal with the wrongdoer in the lump, as though they are alike. I believe all hopeful experiments are to be welcomed, and these are hopeful experiments that I have referred to; the honor system and a properly guarded system of self-government, and all the rest of it, but they all fall short of what is needed for a new penology, by reason of the fact that they are all empirical, all tentative and not based upon a scientific study of the subject of the experiment.

I think the same may be said of what seems to me to be some of the most notable developments of legislation during the past year in our field. I am thinking of the New York statute enacted at the last session of the legislature and, strangely, signed by the governor, that extends the judicial discretion to suspend sentence or put on probation in every case of crime except murder, irrespective of whether the defendant is a new offender or an old one. This is a radical extension of the tentative experiment in granting this discretion that has been made in so many others of our states, though that again does not seem to have been based upon a requirement of study of the individual delinquent. A judge has, I suppose, as heretofore, to determine from the conduct of the wrongdoer on his trial, from his

appearance in court, from the impression which he makes upon the judge, to determine whether he is probably a suitable person to set at large. In some cases the judge will be aided by the investigation of probation officers in the inferior courts, as we call them, rarely, however, if ever, in the Superior Courts of Criminal Jurisdiction.

On the other hand, I think I may say that the recent reform of the penal system of the state of New Jersey is a deliberate attempt to bring into operation all the resources of science in the solution of the problem. The report of the New Jersey Prison Inquiry Commission (see the *JOURNAL* of the Institute, July, 1918, for a considerable portion of the report), submitted to the legislature on January 1st last, the recommendations of which were promptly enacted into law without material change—that report puts little emphasis upon these modern scientific aspects of the criminology problem as we sought to work it out in the state of New Jersey; but the new legislation provides not only for the centralized administration of both the public charities and the correctional institutions, under one head, the State Board of Charities and Correction acting through a Commissioner of Charities and Correction, but it contains also provisions for a scientific staff, to be designated by such Commission, comprehending a state psychiatrist, a state educational director for the prisons, a state parole chief for the prisons, and other staff officers who will have jurisdiction over all the correctional and, wherever it is applicable, over all the charitable institutions, the hospitals for the insane, the homes for the feeble-minded, the farms for epileptics, and all the rest of the social paraphernalia which has secured official recognition in the state of New Jersey. And then there is a further provision that the Commissioner of Charities and Correction, who has all these institutions, charitable and correctional as well, under his control, may at any time, on the advice of the physician or psychiatrist on his staff, transfer any inmate of any correctional institution, who seems to require specialized treatment, to any charitable institution, home for the feeble-minded or what not.

What is lacking to bring the new system to fruition? Only one thing, I should say, a difficult step, though it is not a very long one, and that is to extend to all courts the practice which has come to prevail in our more enlightened juvenile or children's courts, of making a thorough examination of the delinquent an essential preliminary to the judgment, or it may be to the sentence to be imposed upon that wrongdoer. Shall a judge not sentence an insane person to the insane asylum, a mental defective to the home for mental defectives, for the

feeble-minded, and so on, instead of committing them to a prison or a reformatory, to become centers, concentrated, aggravated centers of infection of those who are not so afflicted in that community? That would seem to be the next and almost the last necessary step in the solution of the problem as presented to us by the combined studies of the psychologist and the psychiatrist.

I stated, in my announcement to the secretary of the topic to which I should address myself, which I am very happy to see has been omitted from the printed program, because I have not touched upon it—I stated that I should deal with the relation of the war to criminology. I have already talked too long, but may I not, in conclusion, refer to one or two things that have impressed me as contributing, probably, to the problem which we have under consideration, to its difficulties on the one hand, and to its solution on the other.

There will undoubtedly be in this country, as in France and England, and in Germany and other countries at war, a very considerable increase in juvenile delinquency. It has already begun here. Our institutions for children will speedily become overcrowded, and we shall have to make provision for more. Along with that will come the evil as well as the good consequences of this unprecedentedly rapid emancipation of women from home duties and home responsibilities with their sheltering and restricting effect. We are wont rhetorically to draw the line between liberty and license, liberty is such a very good thing and license such a very evil thing. We don't realize, when we say that, that liberty involves liberty to do evil as well as good, and that license is only the evil extension of what we call liberty, and that there never has in human history been a new birth of liberty to any class in the community, without its carrying the less stable elements of that class into the excess that we call license. We may well, after the war, as well as now, not only because the man is at the front, but because the woman is gaining a new sense of her independence, of her industrial value in the community and therefore of her social value, we may well look for some changes, if not in her standards of morality, at least in the practice that goes with those standards. We shall have, I believe, a very large increase in adult feminine delinquency to add to the great increase in juvenile delinquency, and that that will be so is demonstrated by the fact that it is already so, as my observations of the last few weeks in the study of some of the Pennsylvania penal institutions disclose.

And then there will be the returned soldier. What kind of type will he be? I can not help but have some of my most idealistic

moments poisoned by the reflection that I know some of the fellows over at the front. I knew them at Sing Sing. I knew them as the gang friends, or the gang leaders of my friends, at Sing Sing. I got to know some of them very well.. The fighting sixty-ninth used to go up almost *en masse* once a year to Sing Sing prison, to witness the annual baseball game between the Hell's Kitchen district team and the team of Sing Sing prison. This is the fighting sixty-ninth that has been turning out such a host of heroes over on the fighting line. It seems that the average individual may have every range of quality in him from the most abject vices to the greatest nobility and heroism. To me as to you, the men who are fighting our battle on the front are veritable heroes, and I hope they may come back, those of them who live, covered with crosses and with glory, and that that experience of heroism may give them a new view of the responsibilities of life and its great possibilities. That has not always been our experience after a war. The literature of the period immediately following the Civil War is full of references to what were known as "Civil War Bums," the wastage of the war, the perfectly decent chaps who had led lives of industry before the war, who came back demoralized, incapable of readjusting themselves to the old, settled, humdrum way of living. Doubtless there will be an element, quite considerable element of that sort, in the returning soldiery of the embattled nations, and there will be a new problem of crime.

The implications of this, for our purpose, leave the idea that we are going to be rather tender with the old soldier if he has fallen into evil ways and found it difficult to readjust himself to the conditions of the settled and rather common-place, sordid domestic life. Perhaps most of us feel that impulse occasionally, but we don't feel free to yield to it. We have not the experience to show us how easy it is to break away from those bonds. The returned soldier, mostly a young fellow still, will have had that experience. We shall have some ex-soldier criminality, and our courts, our lawyers, our pharisee community in general, which is so hard on the wrongdoer and finds it so difficult to understand him today, will come to discover that 'wrong doing, criminality, is due to the lack of adjustment, and that the duty of the community is to readjust this dislocated individual to this humdrum life that we call civilization. And if they extend that understanding to the returned soldier, who is by the thousand today undergoing some such process of readjustment, in base hospitals and in our hospitals here, suffering from something that is vaguely called shell shock, which means in too many cases an utter incapacity to adjust

himself to the new life over there, will you not come as a community to realize that the problem of crime is a problem of mal-adjustment for which the community at least admits a share of the responsibility, and that the duty of society is not to use the gallows, or the electric chair, or the club, but to devise some method of readjustment of these maladjusted individuals to society and the community?

There is a soul of good in things evil, and at root war is probably the greatest of the evils that survive in our common humanity. But in that great evil there dwells I believe the soul of a possibly new attitude. And as my last word to you this morning, I want to ask you to join with me in hailing the coming of that new dawn.

DRUGS AND CRIME

(Report of Committee "G" of the Institute¹)

L. L. STANLEY (For the Committee)

Following the course of developments in the world's affairs in the past few years, with retrogression instead of progression, bitterness and strife opposed to harmony and peace, it is seen that many forces must be checked which tend to ultimate evil, and the forces which help to ultimate good must be encouraged.

Under such conditions, more than ever before, should greater attention be paid to the opium addiction, one of those evils which insidiously weakens the nation, not in an open and bold way, but in a secret and hidden manner.

Morphine, on the battlefield, is an absolute necessity. It gives ease to the wounded soldier and saves him from untold pain, tiding him over from the front line trench by the stretcher bearers, and back to the clearing station or hospital, by the bumping ambulance. The drug is quite accessible, as it should be under such conditions, and instructions are given to administer it to the injured soldier. This accessibility, however, may tend to evil, for the drug may fall into unreliable hands—the injured soldier may be given too much over too long a period; there may be unscrupulous trafficking in it, and older addicts may influence younger men to use it. All these conditions should be carefully guarded, for at the present time there are many addicts in the United States who first began the use of morphine when they were soldiering in the Philippine Islands during the Spanish-American war. Their addiction has clung to them and has completely ruined their lives. It will be a great calamity if a proportionately large number of addicts return from the battlefield of Europe as came from the Philippines following our little war.

At home, great care must be exercised in handling the narcotic drug situation. No man who is a morphine, cocaine or opium addict will be taken into the army. He is physically unfit as well as morally

¹The personnel of this committee is as follows:

Hon. Francis Fisher Kane, Philadelphia, Chairman.

Hon. Robert J. Sterrett, Philadelphia.

Dr. H. C. Stevens, University of Chicago.

Dr. L. L. Stanley, State Prison, San Quentin, Cal.

Dr. John Marshall, University of Pennsylvania, Philadelphia.

Albert J. Weber, Manhattan Club, New York City.

undesirable. There is no place for him. Perhaps some do slip in, but they, like the rotten apple spoiling the whole barrel, may teach our young soldiers their horrible vice. The rejection of these men for army service leaves them at home where they exist for the most part by petty crime.

On the other hand the "Work or Fight" edict has gone forth. This class can do neither. What is to become of them? True, they can be sent to state hospitals for cures, but every one knows how easy it is to relapse and how unsatisfactory the results of treatment are. Imprisonment does no good. In most prisons and jails dope can be brought in, and the addict only spends a little time away from his usual haunts, generally with many of his cronies, at the expense of the state.

Almost every one has some vice or weakness. This vice or weakness may be drink, immorality or other abnormal excess. In some these various weaknesses are developed more than in others, and some are able to hold them in submission while others are not. Drink is rapidly being checked. The government, in caring for its soldiers, has seen that spirituous liquors are becoming less and less accessible, and it is possible that before long there will be nation-wide prohibition. The tide is strongly turning that way. This movement is removing the temptation from the weakling.

The Federal authorities are caring for, in an unprecedented way, the health of the soldiers. By reducing prostitution to a minimum, by closing restricted districts and interning diseased women, the moral weakling is to a certain extent protected. But whereas the normal sex act is in this way decreased, it seems that there has sprung up a great deal of sexual degeneracy. This is evidenced by the exposé of various so-called "clubs" where many well known men have been caught in degenerate practices.

With a ban placed on drinking and normal sexual relations, the less strong will lower to some other outlet for their weakness. It may be expected that opium addictions will therefore be increased, even in spite of the restrictions placed on them.

In order to ascertain from each state the conditions there existing, the writer of this report of Drugs and Crime, Committee D, addressed to the Secretary of the Board of Pharmacy of each state a letter asking what narcotic laws are extant and what changes on legislation had been made in the past year, together with any other notes or bits of information regarding the subject.

Most of the states have been heard from and below the laws

are briefly stated. Preceding these synopses, it is timely to allude to the Harrison Act. After America occupied the Philippines the prevalence of the opium trade was brought to the world's notice. In 1909 the International Opium Commission, sitting in Shanghai, criticized the United States for its dereliction. As a result Congress passed the opium exclusion act. This act proving insufficient to suppress the opium trade, Representative Harrison, of New York, introduced three bills. The first increases the tax on opium importation and raises the manufacturers' bond. The second law is a re-enactment of the opium exclusion act of 1909, with severer provisions. In this, to obviate smuggling, the law shifts the burden of proof to the defendant to establish his innocence. Transshipments are prevented. The third one, with which most people are familiar, was passed December 10, 1914. As Congress has no power to enact regulations for the sale of any article within state boundary lines, this act was drafted under guise of revenue measures, and to regulate it through levying of a tax.

ALABAMA

Section 14 of the Alabama Pharmacy Laws declares it to be unlawful to sell, furnish, or give opium derivatives, except on original order of licensed physician, dentist or veterinarian. The prescription shall have date, name of person for whom prescribed, and shall be kept on file not less than five years by dispenser. There shall be no refill and no duplicate prescription issued. But this section allows the sale of "preparations containing opium, and recommended and sold in good faith for diarrhoea and cholera", each bottle or package cautioning against habitual use. It also allows the sale of Dover's Powder, and Tincture of Opium not exceeding one ounce to same person in one day. Preparations containing not more than two grains of opium or one fourth grain of heroin to the fluid ounce, are not affected by the above legislation. It is unlawful to prescribe any opium or cocaine derivatives for habitual users. This section has not been changed since 1915. Penalties are provided for any violations.

ARKANSAS

Secretary Frank Schachleiter of Little Rock, writes—"We are busy framing our narcotic law to be submitted to the legislature this winter. The tentative draft contains these chief features that were not compatible in the federal law: Unlawful to possess—unless under strict supervision of a physician or undergoing institutional treatment.

"Striking out the word *dealer* and making the registered pharmacist the only distributor or dispenser.

"The sale of exempted domestic and proprietary remedies—restricted to the hands of pharmacists.

"Severe penalties prescribed for violations.

"Will be pleased to have suggestions from you to aid in perfecting measure."

CALIFORNIA

It is unlawful to give, sell, offer to sell, furnish or have in possession, cocaine, opium, morphine, codeine, heroin, etc.—except upon proper prescription, such prescription to be permanently kept by dispenser and not again compounded, if each fluid ounce contains more than two grains of opium and one-fourth grain morphine, one grain codeine or one-eighth grain of heroin.

Wholesalers, jobbers and manufacturers of narcotic preparations shall keep the order blanks accessible for inspection by representatives of the Board of Pharmacy. These records are required under provision of section 2 of the Act of Congress, December 17, 1914.

It is unlawful to prescribe for any habitual user, or to prescribe narcotics for any one not under treatment in the regular practice of his profession. Exceptions are provided for the above.

Section 8a designates as a misdemeanor the possession of opium pipes, or pipes for smoking opium and its preparations. A penalty of \$100 to \$400, or by imprisonment from fifty to one hundred and eighty days, or both for first offense. More severe punishment is provided for second offenses, while for third offense a person shall be deemed guilty of a felony and sent to state prison for one to five years.

All narcotic drugs and opium pipes may be seized by any peace officer with search warrant. All such contraband shall be ordered destroyed within six months after it is delivered to the Board of Pharmacy, which may, however, dispose of it by gift to the state prisons and hospitals, or by sale to wholesalers.

The Pharmacy Board of California is quite active and is making strenuous efforts to curtail the use of narcotics. Special investigators are used, who secure many convictions.

COLORADO

It is punishable by fine of \$100 to \$300, and imprisonment of one to six months for unqualified person to sell, distribute or give away, or in any manner dispose of, narcotic preparations.

CONNECTICUT

The Secretary of State referred the communication regarding narcotic drug addictions to the Dairy and Food Commissioner, who has not replied. However, revision of several statutes of Connecticut, 1902, provide a punishment of twenty-five years' imprisonment for administering drugs to any person with intent to commit robbery or other crime.

Habitual users are not to be furnished with narcotics.

FLORIDA

No changes have been made in the Florida law since 1915. It is unlawful for pharmacist, druggist, person, firm or corporation to sell at retail opium or cocaine derivatives without qualified prescription. Prescriptions must bear date and serial number and be filled but once. Only licensed physicians, dentists and veterinary surgeons may prescribe, and they shall not prescribe for addicts except in certain cases. An habitual user who proves refractory or difficult to treat must be reported by the attending physician, to the State Board of Health or County Judge, who in turn shall bring such cases to the attention of the prosecuting officer of the county for prosecution.

HAWAII

Hawaii still has considerable difficulty with the drug problem, because of its population of mixed races, and its situation midway between China and America. Captain of Detectives McDuffie of Honolulu states that occasionally packages of narcotics are thrown overboard from transpacific liners, picked up by the Japanese fishermen, and later landed on the islands. Considerable work is necessary to control these rings.

The Board of Health may authorize any licensed person to sell opium and preparations thereof under certain restrictions, as physicians' prescriptions, etc.

Any person who shall use or smoke opium or any preparation thereof shall be guilty of a misdemeanor, and punishable with fine or imprisonment.

ILLINOIS

The following letter from Supt. of Registration F. C. Dodds, dated July 15, 1918, is as follows: "I have your letter of July 8, and take pleasure in inclosing herewith a copy of the pharmacy law in force July 1, 1917. On that date the Department of Registration and Education succeeded to all powers and duties vested by law in the Board

of Pharmacy. However, no change was made in the letter of the law."

The Illinois law restricts the sale or disposition of narcotics to licensed physicians, dentists or veterinarians who are registered with United States Collector of Internal Revenue, in accordance with Congressional Act of December 17, 1914. The physician must keep a record of the amount of narcotics used in his every-day practice. No prescribing for addict is allowed.

IOWA

This state law cites that none shall sell, or have in his possession with intent to sell, any coca, cocaine or derivatives. The law apparently leaves opium derivatives out of consideration entirely. The secretary writes: "Latest we have; not troubled much here in Iowa."

KENTUCKY

No legislation has been passed here since the national act. The act of 1912 restricts the sale and dispensing of opium derivatives but not cocaine. It allows patent and proprietary preparations to be sold, providing they contain less than two grains of opium to the ounce.

Violations are punishable by fines of not less than \$25, nor more than \$100.

INDIANA

This law embodies usual provisions of other states, restricting sale by druggists, preventing refills and duplicates. Requires wholesalers to report each month to board by mail, sales of narcotics. It excludes patent medicines of weakly narcotic preparation.

MARYLAND

Has no narcotic act up to and including 1916. The Secretary of Board of Pharmacy writes that, "there were no changes whatever made in our poison or other laws pertaining thereto by the last legislature."

MASSACHUSETTS

J. J. Tobin, Secretary Board of Pharmacy, states that the narcotic law has not changed since its enactment in 1917, and adds—"I wish to call your attention to a few provisions in our state law which are more stringent than the U. S. law. Section 1 provides that the prescription itself must bear a very complete record, so that there is practically no opportunity for a narcotic to be mistakenly sold for other than the use intended by the spirit of the law. Section 9 restricts the sale of cannabis indica and cannabis sativa, which are not included in the U. S. law.

No veterinarian shall prescribe for a human being. All buildings resorted to by users of narcotic drugs for purpose of using such drugs shall be deemed common nuisances.

The keeper of such a house is punishable by imprisonment for not more than one year.

It is unlawful, except in well defined limits, to have in possession hypodermic needle, syringe or other instrument adapted for use of narcotic drugs. Records must be kept of persons to whom such instruments are sold by the venders.

MINNESOTA

Secretary E. A. Tupper writes—"Apart from the laws inclosed, the only law under the act in this state, besides the Harrison Law, is the Nimocks Anti-Narcotic Law."

This law is different only in slight respects from the other state laws.

MICHIGAN

This state makes provision for patent medicines having small amounts of opium derivatives in them, but declares it unlawful for unqualified persons to have or trade in narcotics. This act was passed in 1915.

MISSISSIPPI

The only law pertaining to habit forming drugs is section 21, H. B. No. 91, enacted in 1916, which declares that the Board of Pharmacy may revoke the license of any pharmacist convicted of unlawfully selling morphine, cocaine or any habit forming drug.

NEVADA

Secretary J. W. Taber writes:—"Up to the present time no changes have been made in the laws of Nevada on habit forming drugs. We are going to try and put through several changes the first of the year, at the next session of the legislature."

NEW YORK

New York passed an act on May 13, 1918, for the regulation and control of the sale, prescribing, dispensing, dealing in and distribution of cocaine and its derivatives. A department of narcotic drug control, with one commissioner, is created. The commissioner receives \$6,000 annually, and is empowered to make rules to supplement the purposes of the act, and to enforce its provisions. The state may be divided

into four districts, and maintain office in each. The commissioner shall obtain data in re drug addictions, shall have power to inspect any institution for treatment of addicts, and shall report annually to the legislature. He shall have three deputies.

All persons dealing in narcotic drugs must register and receive certificate of authority. Orders must be made on official blanks. Various acts are permitted as per act 427. All containers of drugs shall be clearly labeled. Only qualified persons shall possess a hypodermic syringe. Wholesalers must keep records of sales open to inspection.

Drugs which have been seized shall be delivered to this department.

Any magistrate may commit an addict to state hospital for treatment. If a defendant is a prisoner in criminal procedure and it appears he is an addict, he may be committed at any stage of the proceedings and sentence be suspended. The trial is to be resumed when patient is discharged by chief medical officer.

Any public hospital may accept as charity patient any person voluntarily applying for treatment for drug addiction.

Twenty-four thousand dollars is appropriated for this act.

NORTH DAKOTA

Secretary U. S. Parker writes:—"There has been no legislation in this state for over two years. Our laws are such that, in addition to those covered by federal regulation, we can not sell without a physician's prescription, chloral hydrate or cannabis indica."

NEW HAMPSHIRE

"In response to yours of second would say that there has been no change in legislation in our state affecting the sale of habit-forming drugs during the past one and a half years.

"JAS. W. Dow, Secretary."

OKLAHOMA

Section 14 of General Laws makes it unlawful to retail opium and its preparations except paregoric and other preparations of opium containing less than two grains to ounce. This law apparently is not satisfactory.

OHIO

Law, not amended since 1913, is similar to that of most of the other states. Possession by unqualified person is unlawful. Only

licensed persons allowed to prescribe. Patent medicines allowed with limitations.

TEXAS

Only usual state law. Qualified prescription. No duplicate or refill. Unlawful to prescribe for addict. It is claimed that El Paso and the Texas border is a place of entry for opium smugglers from Mexico.

TENNESSEE

• "We have no recent legislation on this subject, but we do have a law in effect which is very similiar in all its main provisions to the Harrison Act."

RHODE ISLAND

Legislation approved April, 1918, is quite complete and is similiar to Harrison Act in many respects. In the act there are eighteen sections.

VIRGINIA

No legislation since 1910. Possession unlawful. Qualified prescription. Violation considered felony.

VERMONT

"There have been no changes since the last session and as far as I can learn none are proposed at the coming session of the legislature.

"W. G. BEEBE, Secretary."

Legislation is usual type of other states.

WASHINGTON

D. B. Garrison, Secretary Board of Pharmacy, replies as follows: "Our law is virtually the Harrison Act without the teeth. Our law has not been altered for several years.

WISCONSIN

Ordinary law. Allows patent medicines with limitations. Forbids prescribing for habitual users. Restricts sale. Regulates prescriptions.

DRUGS AND CRIME

[Report of Committee "G" of the Institute (Concluded)]

ALBERT J. WEBER¹ (For the Committee)

Since its presentation by its Chairman Francis Fisher Kane, Esq., at the last annual meeting of the Institute in 1917, a great and unusual mass of new evidence and information has been added to the then existing material available as authoritative reference.

The very exhaustive investigation in November, December, 1917, in New York City, of the New York State Joint Legislative Committee, appointed to investigate the laws in relation to the distribution and sale of narcotic drugs resulted in placing before jurists, executives and administrators, as well as the members of the medical profession, material which throws new and unexpected lights upon the subject of narcotic drugs and narcotic drug addiction and which to a very considerable extent revolutionizes the previously existing conception of the matter and points the way to the remedy of mistakes in its handling. The evidence and testimony presented before the foregoing committee came from all sorts of sources ranging from the narcotic drug addicts themselves to the United States Department of Internal Revenue officials, for every phase and aspect of the subject was discussed and opinions were expressed by members of the medical profession and divers others voicing the attitudes of the various schools of medical thought, social workers, municipal police "narcotic squads", eminent members of the judiciary, societies dealing with and especially studying the narcotic drug addict, his circumstances, environment and associations, all gave most interesting testimony from their experiences, opinions and conclusions. The writer of this article as foreman of Grand Jurors United States of America for the Southern District of New York, who drafted resolutions which were adopted and legally filed in the United States District Court by order of the Justice presiding at that term, read the resolutions² reciting that the United States should exclusively control the manufacture of all narcotic drugs, the price, export and importation, and the United States Public Health Service at Washington should initiate intelligent treatment and human care in handling patients suffering from narcotic drug

¹The Foreman of Grand Jurors, United States of America, for the Southern District of New York who for several terms investigated illegitimate traffic in narcotic drugs.

²See this JOURNAL, Vol. VIII., No. 5, p. 781, January, 1918.

addiction. He also found that narcotic drug addiction has made great growth through the denizens of the underworld as a result of their having been employed by the greater and less chiefs of the illicit and criminal narcotic drug traffic as vicious distributors and peddlers. While so engaged, and not yet themselves narcotic drug addicts, they had repeatedly yielded to the urge of curiosity aroused by what they had seen in others, until the condition of narcotic drug addiction became developed and firmly established in their own bodies. This condition induced great suffering and the ferocious need for narcotic drug by the foregoing for they stopped at nothing to secure the opiate necessary for the prevention of these physical tortures such as one staggers to see.

Our valiant American boys, soldiers in the army who are fighting those forces of evil of democracy to preserve and protect us and upholding American tradition for unalloyed victories and who are wounded in this ghastly war, are going to return to us in large numbers suffering from narcotic drug addiction. This prophecy is not idly made. The legislative committee brought out evidence to this effect from lay and official sources, testimony that was previously known to many who were in contact with the subject and familiar with the reports reaching this country on the matter for the past two years. From these reports and from actual and tangible examples and proof it has been known that narcotic drug addiction exists in our own army and navy, and that it is unavoidably on tremendous increase under conditions of actual warfare. That the medical profession has been so slow to recognize and prepare for this fact is greatly to be regretted.

Dr. Ernest S. Bishop, of New York, recently called attention to this fact and the seriousness of narcotic drug addiction in this world war, in a paper read at the New York Academy of Medicine before the New York County Medical Society.

As Doctor Bishop was the one authority constantly quoted and unchallenged by witnesses of all description, official and otherwise, during the committee's investigations, and as his work and experiences in the field of narcotic drug addiction have been broader and covered more phases, therefore, we must take warning from his utterances as to narcotic drug addiction in this terrific slaughter of human beings.

It has become established and proven beyond argument that narcotic drug addiction is not a condition peculiar to any special walk of life or social or economic or other condition. Persons in the highest walks of life, in all callings, professional and otherwise, irrespective of age or any other circumstance are afflicted with it. Some have de-

veloped it through criminal and morbid environment, but the probability now seems to be that the greater part have developed it as a result of medication beyond their control.

The final outcome of the New York State Joint Legislative Committee hearings was the amending of the public health laws to create a special Department of Narcotic Drug Control under the charge of a State Commissioner; it having become evident from the testimony of these hearings that there was no other way to harmonize and compel co-operation among the various conflicting opinions and conceptions of the laws on this matter and the administration of those laws and of the methods of procedure in the handling of the condition, medical and otherwise.

This law is a departure in state legislation, conferring powers hitherto unknown upon an administrative and executive officer of the state, and whether it works out as a beneficent and spectacular success or as an absolute failure will depend upon the wisdom and intelligence and familiarity with the subject of narcotic drug addiction possessed by whomsoever is appointed to fill this very important position. The attitude of the public press towards narcotic drug addiction and its victims has radically changed in the recent past and will be a factor to be reckoned with in all future narcotic drug activities.

The New York State Bill was passed unanimously by the legislature and became a law April 30, 1918, by the governor signing this bill. It goes into full effect February 1st, 1919. The governor, after signing the bill, stated publicly that his experience as district attorney of New York County had been such that thousands and thousands of men and women were brought to agonized deaths through use of opium, morphine, cocaine and other drugs.

Many physicians objected seriously to this bill, because in their opinion, it infringes upon the obligation of professional secrecy between physician and patient, and was, generally speaking, unconstitutional. Since, however, it appeared at public hearings during the past months, that the mass of the medical profession and even the official heads of its organizations were unfamiliar with the condition as it exists, the governor of New York State concluded that their objections were not valid, and signed the bill.

A copy of the New York Bill will be found in this number at page 438.

In conclusion your committee finds it to be very apparent, that present conditions in relation to the illegitimate sale, distribution and traffic in all narcotic drugs and of cocaine throughout the country, in

spite of all legislative, executive and administrative efforts to curb it, has materially increased, which is the absolute undeniable, but shameful and sorrowful truth and demands a call for united general public activity. We must arouse Congress to immediately enact suitable statutes calculated that the United States shall exclusively control the price, manufacture, exportation and importation of all narcotic drugs and of cocaine as the most powerful means of combating the drug menace. The American nation is awakening from its comatose and dormant condition regarding this evil and must take steps to avert the horror of this diabolical catastrophe and forthwith rescue its race from destruction.

ON THE TEACHING OF CRIMINOLOGY IN COLLEGES AND UNIVERSITIES

(Report of the Committee of the Institute)¹

ROBERT H. GAULT

This committee was appointed to inquire what provision is now being made in our colleges and universities and other institutions for instruction in the various subjects that contribute directly or indirectly to the understanding and solution of the problems that are presented by the criminals and delinquents in our communities. It is expected also to present a plan by which education and research in the field of criminology may be advanced.

As a means of approval we undertook a survey of the curricula of colleges and universities. A questionnaire² was sent to a consider-

¹The personnel of the committee is as follows:

Robert H. Gault, Northwestern University, Chairman.
J. B. Miner, Carnegie Institute of Technology, Pittsburgh.
Charles A. Ellwood, University of Missouri.
H. C. Stevens, University of Chicago.
Edwin R. Keedy, University of Pennsylvania.
A. J. Todd, University of Minnesota.

Only the first three named have signed this report. It has been impossible to get response from other members owing to their being involved in war work.

²(1) What courses are now offered in your institution bearing upon each of the following subjects? (Indicate the school or department of the university in which each course is offered): (a) Criminal Law and Procedure; (b) Case Studies of Delinquents, Juvenile and Adult, for Law Students; (c) Parole and Probation; (d) Criminal Psychology; (e) Psychology of the Abnormal Mind; (f) Psychological Tests Applied to Delinquents; (g) Criminal Sociology; (h) Organization of Penal and Allied Institutions; (i) Criminal Statistics; (j) Police Systems; (k) Scientific Detection; (l) Other courses designed particularly for the police or for those who are in preparation for police service; (m) Other courses that bear directly or indirectly upon Criminalistics from any angle; (n) What courses such as the above are planned for your university for next year or the year following?

(2) Do you think it is desirable to have organized in our larger universities departments of Criminology or Criminalistics as we now have our departments of Sociology, etc., or is it satisfactory to distribute the above courses among other departments as at present? Why?

(3) Do you think that the number of such courses as those mentioned above, and others allied, should be increased? Why?

(4) Do you think that the time is here, or soon to come, when a few or several of our universities should establish a police school on the same footing as other professional schools?

(a) Is there sufficient favorable public sentiment to support such a school?

(b) Do you think it would be preferable for the university to lend its aid to such a school organized in the police department of the city? Why? (c) Would it be preferable to each of the above alternatives to have police schools, and

able number of professors including others besides the group that compose this committee. It was not thought necessary to make a complete survey of all colleges and universities in America. Those we have approached³ are no doubt indicative of conditions in all others and therefore may serve as a true guide to present practice and to desirable future development. We have it in mind, too, that there are educational institutions, neither colleges nor universities, in which notable work is being done. Among these are such as the Chicago School of Civics and Philanthropy, the New York School of Philanthropy, the Police School in New York City, the Police School in Berkeley, California, and various criminological or psychopathic laboratories and hospitals.

As a general rule the College of Liberal Arts offers instruction, usually in an academic fashion, in subjects comprised in what may, from our viewpoint, be termed the criminology group. One of these is the general course in sociology which is offered in the department of economics or in that of political science where there is no distinct department of sociology.

This general course ordinarily covers but a semester though often it is extended throughout the year. It dips into the causes of crime, prevention, and the treatment of criminals and juvenile delinquents. It is done very hastily and superficially by necessity in the smaller colleges in which the teaching force is limited. In other institutions this general, introductory course is followed by more highly specialized work in charities, criminology, corrections, statistical methods

for that matter schools covering the whole field of Criminalistics on a foundation wholly distinct from either universities or police departments? Why?

(5) What suggestions have you to offer, not covered above, for the enlargement of facilities in America for the teaching of Criminalistics?

(6) What suggestions have you to offer as to the procedure of this Committee?

³Harvard University.
Columbia University.
Yale University.
Johns Hopkins University.
Cornell University.
University of Pennsylvania.
University of Chicago.
Northwestern University.
Leland Stanford University.
University of Illinois.
University of Wisconsin.
University of Minnesota.
University of Missouri.
University of California.
University of Washington.
University of Pittsburgh.
University of Michigan.

(Columbia University maintains what is described as a statistical laboratory), recreation, juvenile courts, probation, housing, etc. These subjects are often covered under other nomenclature. They all may be made very important from the viewpoint of the student of criminology. Such expansion is limited to the larger universities, and the range is particularly large and varied in those universities that have more or less close affiliation with schools of philanthropy or schools of civics. There is no good reason, however, why any college, however situated, should not bring its students to their advantage into vital, practical touch with the problems in criminology.

In institutions with which schools of philanthropy are affiliated the very best of facilities are afforded not only for academic classroom instruction but for sociological laboratory work as well. When we speak of affiliation in this connection we do not limit the term to a strictly official sense. As far as our knowledge extends the New York School of Philanthropy and Columbia University; the St. Louis School of Philanthropy and the State University of Missouri, and the School for Social Workers in Boston, and Simmons College are the only instances in the United States in which affiliation is official. In other cases there is such close mutual understanding and co-operation that little difficulty is met when a student seeks for credit in one institution for work accomplished in the other. At any rate that is the case as far as it relates to the relations of the Chicago School of Civics and Philanthropy and the universities in the state of Illinois. It is appropriate to say here that certain members of the staff of instruction in the School of Civics and Philanthropy are members also of the faculty of the University of Chicago and that on the Board of Trustees of the School are representatives of the faculties of the State University of Illinois, the University of Chicago, and Northwestern University.

Departments and schools of education, too, contribute at least indirectly to education in the field of criminology. This is accomplished in part through a general course of instruction in so-called social education, which has become very popular in the course of the last few years, but particularly in connection with school surveys. At Northwestern University, for example, a survey is being made of all the schools of Evanston, Illinois, with a view to discovering the course of mental development through the grades, and the adaptability of schools to the needs of individual pupils. This survey is expected also to show where the feeble-minded and other defective children are in the grades and so to stimulate appropriate provision for them.

These last are secondary objects of this particular survey. Evidently, however, the work affords special opportunity for emphasis upon this well-known fact, among others, that delinquents and criminals are largely recruited from among those to whom the schools are mal-adjusted.

Practically every university department of education or school of education, especially in the large centers, conducts investigations and gives instruction in organization for vocational education and the effects of such education upon school habits, character and post-school adjustment in profitable occupation. Here is a favorable opportunity, at any rate, for bringing important relations from the criminologist's viewpoint to bear in the minds of students. The reports of the Lane Technical High School in Chicago, of others of that type, and of pre-vocational schools as well are indications that such schools may be important correctives of serious backwardness among pupils in the regular schools. These considerations make it apparent that college and university instruction in vocational education may contribute in a secondary but very important way to education in criminology.

A much more direct contribution, however, is made through the operation of the psychopathic laboratory or clinic, or whatsoever it may be called. It is a matter of indifference whether it is organized in the department of education or in that of psychology. The University of Chicago, the Leland Stanford University and Columbia are outstanding illustrations of the organization of such laboratories in the department of education. In the University of Pennsylvania, on the other hand, a similar laboratory and clinic are in the department of psychology. It is not possible to overestimate the possibilities for education in criminology afforded by these means. Every such laboratory, as far as this committee is aware, studies the juvenile offender as well as the backward pupil in the school, and from Leland Stanford University the work reaches out to the prisons of the state, especially to San Quentin. Those laboratories and clinics make a strong appeal to students and to the general public as well through their publications in periodical literature and in bulletin form.

In addition to his co-operation with others in the immediately practical application of tests to determine levels of intelligence, the psychologist in practically every laboratory is contributing toward satisfaction of the criminologist's needs whether his service is so recognized by himself and others or not. His investigation of the learning and the memory processes; of the effects of practice, fatigue, sleep, and intoxication upon motor skill and mental clearness; his in-

vestigation of report or testimony—all of these have bearings upon the problems of the criminologist that have but to be mentioned to be recognized. The psychologist in many universities enters also into the study of the psychoses as to their origins in the individual's reaction to untoward social conditions and to disease, and their effects upon behavior. There are many who think that there is no professional man or woman who is situated so advantageously as is the psychologist to see and appreciate the significance for behavior of the complex and the conflict and to teach that significance to others. A course of study of the abnormal mind is found in many of the institutions to which we sent our inquiries. It is usually a course of lectures and readings, interspersed with visits to the clinics. It is of considerable value, as we shall see, to students who are looking forward to certain professions.

Beyond the facilities for general education afforded by the college of liberal arts lie the specialized professional schools.

Each university that maintains a law school gives instruction in criminal procedure. This is as a matter of course. Looking at it from our point of view it would seem very desirable that students of law should have as thorough an introduction as possible to the methods and ideals that are expressed in case studies of juvenile and adult delinquents. This would facilitate escape from the abstract conception of crime and criminals that has characterized the legal profession and from the tendency toward mechanical procedure in dealing with the individual. Practically no opportunity of this sort is offered, however, in the law schools. A few years ago Professor E. R. Keedy, at Northwestern University, read and discussed with his successive classes descriptions of pathological juvenile delinquents such as are found in Dr. Healy's "Individual Delinquent," and more recently his successor, Professor Robert W. Millar, has continued the method. In these exercises emphasis has been laid not only upon the description of the cases as cases, but also upon their disposition, which is usually quite unconventional from the legal point of view. As far as we are aware the only cases of approximation to this innovation in law school curricula are to be found in a course recently offered in the Harvard Law School relating to penal methods, and in other schools such as those at the University of Minnesota and Northwestern University, in which law students obtain practical experience in handling the sort of cases that come to the attention of legal aid societies. These, of course, are not analogous to the psychopathological cases of juvenile and adult delinquents strictly, but, as these societies are ordinarily

conducted, they emphasize investigations into the sociological relations of both the plaintiff and the defendant. The student therefore who obtains laboratory training in this connection is brought into touch with an ideal that prepares the way for the lawyer of the future who will insist upon comprehensive investigations, especially in criminal cases. We consider it highly desirable that law students in the course of their training should fulfill a minimum requirement of attendance at a psychiatric clinic, preferably in a prison in order that they may become familiar with the types of criminals found in practice. At the University of California during three successive summer terms, 1916, 1917, and 1918, several systematic courses have been offered in the psychological, pathological, and sociological aspects of criminology and arrangements have been completed for conducting a division of criminology in that university at least during the first half of the year 1918-1919. The plan does not involve great additions to the teaching force nor to the curriculum of the university. Practically no addition to the curriculum will be made excepting two or three courses in mental and nervous diseases such as are found among juvenile and adult delinquents, and a course in the education of delinquents and possibly one in mental testing. What it amounts to is mainly a grouping and co-ordination of courses so that students who have a professional interest in criminology may find what they need.

The medical colleges come very close to the problem of the criminologist. They offer a minimum of work in psychiatry or mental diseases. Ordinarily this amounts to little more than the observation of symptoms.

In addition to the colleges and universities the police school is contributing its share toward education in criminology.

The Police School is only making its appearance in America, although in European centers it has for a long time enjoyed favorable recognition. The earliest instance of police school organization was afforded by the City of Paris in 1883. One of the best known men among Europeans in this connection is Salvatore Ottolenghi who, in 1896, established such a school in the University at Sienna. At last reports he was director of the school for scientific police in Rome, in which each recruit receives four months of intensive training.⁴

We have information of but one instance in America in which university authorities have formally authorized giving instruction to active policemen. This action has been taken at Northwestern Uni-

⁴See Fosdick, *European Police Systems*, 213-216. In this volume is a summary of the situation in Europe as it relates to Police Schools.

versity. A committee of the faculty thereupon drew up a tentative course of study for police officers and submitted it to the Mayor of Chicago in order to obtain, if possible, the co-operation of the city government.⁵

It was expected that ultimately this course would attract not only members of the force who seek promotional credit through the successful completion of such studies, but also a steadily increasing group of other young men who should see in it the opening of a professional career. Owing to a variety of conditions—among others the depletion of man power on account of the war—it has not yet been possible to carry out the scheme.

Under the wise leadership of Chief August Vollmer with the co-operation of the University of California the Berkeley police have developed a police school that stands out prominently. This has now been in operation three years with distinguished success.⁶

The New York City School for Police deservedly attracted a deal of attention during the administration of former Police Commissioner Arthur Woods. This institution was developed within the police department to provide training for the officers and others on the force and for the recruits.

The foregoing statement would not be complete without reference to the psychopathic laboratories, or whatsoever else they may be called, in connection with many of our juvenile courts and in the municipal courts of Chicago and Boston.

In the judgment of this committee the higher educational institutions of our land should do all in their power to advance the interest of research and teaching in criminology. We believe that by the pursuit of a vigorous and reasonable policy in this regard they may assume a leading role in the attainment, or in the approximate attainment of several valuable ends:

1. A more intelligent attitude on the part of the bar and the judiciary toward the criminal as an individual with certain defined physical and mental traits; an individual who, under certain definable conditions, commits a concrete act which is described as delinquent or as criminal, but who should be cared for as his condition demands rather than punished, in the narrow sense, for the one act.

2. An open mind on the part of the public at large, such as will in time stimulate earnest and intelligent search for the most suitable legislative, educational, and other means for preventing the

⁵See the proposed course of study in this Journal, VI, 5, pp. 794-795.

⁶An outline of the curriculum may be found in this Journal, VII, 6, 880-881.

development of criminals and for controlling them when they do appear.

To meet these ends it is the judgment of this committee that wherever it is feasible colleges and universities should establish in their departments of psychology or of education or in their schools of law or medicine psychopathic laboratories and clinics. Such laboratories, etc., will find their data in the public schools, in philanthropic institutions in their vicinity, in the courts, jails and other places of detention. The laboratory therefore will be a contribution to the equipment of several interests of the university: psychology, medicine, public school education, sociology and law.

In addition the college and the university should establish professorships of criminology—not departments—within the department of sociology, economics, or political science (whatsoever the department may be called in a given institution) or in the department of psychology. Criminology is so composite a field that it is impossible to fit it into any one departmental organization of the university. The professor of criminology will bring together into a course of instruction, from the point of view of his special interest, pertinent matter from many fields of research and through the influence of his personality other instructors in other departments than his own will co-operate with him in their instruction. The professor of criminology may devote his full time to his professorship or he may employ a large or a small portion of his time and energy in giving instruction in sociology, or in psychology, strictly so-called. He should so organize his course or courses in criminology that it may attract pre-legal and pre-medical students. Indeed, in our judgment students of law at least should be required to pursue in the pre-legal course, or in the law school itself, *as a minimum*, a half year's instruction in general criminology; and this term, as we use it includes penology. This course, to be of most practical use in the education of the type of lawyer and jurist that we of this Institute hope some day to see in the majority must make large use of case histories which detail the mental, physical and social characteristics of individual offenders, their treatment by what we call progressive courts, and the results of such treatment as determined by an impartial follow-up of the after history of these offenders such as has been made, e.g., of 116 cases reported in the report of the Chicago City Council Committee on Crime.

Your committee believes that what we have suggested in the foregoing is a minimum that is easily within the reach of at any rate most of our larger colleges and universities.

With a view to preparation for instruction and research in criminology on a much larger scale, whether within a university or on a distinct foundation, your committee recommends the following tentative prospectus:

DEPARTMENT OF CRIMINOLOGY

TENTATIVE PROSPECTUS

A

Outline of Subject Matter

(The research problems suggested here are only a few that seem now most timely.)

I. Anthropological factors in juvenile and adult delinquency, including courses covering:

A. The mental factors:

- a. General psychology.
- b. Educational psychology.
- c. Psychology of defectives.
- d. Mental diseases.
- e. Criminal psychology.
- f. Social psychology.

Research—

- (a) Development of mental tests applicable to delinquents, juvenile and adult.
- (b) Psychological survey of penal institutions of a large city.
- (c) Follow-up of cases through a period of years to test the validity of diagnosis and the efficiency of our methods of treating delinquents.

B. The physical factors:

- a. Heredity.
- b. General development.
- c. Development of the nervous system.
- d. Cerebral pathology and general neuro-pathology.
- e. Degenerative infections.

*Research—*The role of syphilitic and other infections in the causation of feeble-mindedness, and hence in failure of self-control.

II. Social factors in the causation of juvenile and adult delinquency, including courses covering:

A. Criminal sociology, including statistical studies of:

- a. Poverty.
- b. Immigration.
- c. Occupation.
- d. Congestion.
- e. Race.

f. Truancy.

g. Vagrancy.

Research—Re-examination of statistics of immigrants and immigrants' children grouped by race and age and type of offense in relation to delinquency of juvenile and adults.

III. Prevention of development of delinquency, including courses covering:

- A. (a) Special classes and schools for mal-adjusted pupils.
- (b) Vocational education as prevention of truancy and incorrigibility and as supplying steadying motives.
- (c) Playground movement.
- (d) Social center movement.
- (e) Immigrants' Welfare League.
- (f) Mothers' pensions.
- (g) Social insurance.
- (h) Direction of reform in police function for organization of social betterment forces.
- (i) Methods of handling vagrants and inebriates in Europe and America.

Research—

- (a) Plan of vocational education system for first-class cities.
- (b) Police reorganization for prevention of development of criminals.

IV. Control and correction, including courses covering:

A. Control by law.

- (a) Social legislation.
- (b) Legal, administrative, and disciplinary and educational aspects of penal and reformatory institutions.
- (c) Organization of courts and court procedure.

B. Police.

- (a) Present organization of police in Europe and America.

C. Extra-institutional control.

- (a) Organization and administration of probation and parole.

D. Statistics of:

Arrests, false arrests, periods of detention, grand jury actions, nolle pros, convictions, commitments, term of imprisonment, recidivism, fines, probation, parole.

Research—

- (a) Accumulation and analysis of criminal statistics of a large city. (This in time should make the department virtually a bureau of criminal statistics in which statistics are kept up to date and published year by year.)
- (b) Experimentation in reformatory education and development of system of education for penal and reformatory institutions.

- (c) Investigations of the administrative aspect of correctional institutions for the purpose of attaining a standardization of penal law and of regulations governing such institutions.

With several exceptions the topics suggested in the above outline are now covered by courses offered in the various departments of our large universities. In practically no case, however, is research in these departments turned in the direction of criminological investigations. Research in criminology should be the special function of the proposed department. The department should furthermore offer extension courses for the benefit of public servants such as probation officers, parole officers, prison and police officials, and others dealing in a practical way with problems of criminology. The necessary additions to the lists of courses are now offered in the universities.

The following budget would cover the cost of this major program:

B

Equipment and Cost

	Salary
One Professor of Criminology (executive officer)—Criminal psychology, social psychology, extension courses, director of research, editor of journals and monographs.....	\$ 6,000.00
One Instructor in Criminology—Criminal statistics, organization and administration of statistical bureau, methods of control of vagrants and inebriates, organization and administration of probation, parole, etc., research.....	2,000.00
One Instructor in Criminology—Organization and administration of, types of prisons and reformatories, penal law, prison labor, prison and reformatory schools.....	2,000.00
One Lecturer on Expert Testimony.....	300.00
One Lecturer on Organization and Administration of Police Departments	300.00
One Lecturer on the Medico-legal Aspects of Criminology..... (Lecturers may be selected year by year from among eminent men and women, who should be induced to specialize in a very limited field, to give a course of lectures of a half year duration.)	300.00
One Research Assistant (giving one-half time to assistance in research and one-half time to studies toward an advanced degree)	1,000.00
One fellowship	650.00
Two scholarships (\$150.00 each).....	300.00
One Secretary (editorial assistant; immediate charge of business details in connection with publications).....	1,500.00
One Stenographer, three-quarters time	750.00

Incidental expenses in connection with research (printing, laboratory supplies, etc.)	250.00
Library	200.00
Subsidy for publications; first year.....	5,000.00
	<hr/>
Estimated total cost of department for year.....	\$20,450.00

LABOR CONSCRIPTION IN THE PRISONS OF ILLINOIS

THOMAS H. KILBRIDE¹

The present time of strife and stress has its paramount issue—to win the war—and to accomplish this the man-power of the nation must be conscripted for labor just as effectively as the boys of certain ages have been conscripted for the trenches. The boys in France cannot prevail if labor lags at home and does not furnish the necessary supplies in food and munitions with plenty of ships to transport them to their destination.

Illinois, like every other state, has some people who languish behind prison bars. These persons have lost their freedom and their citizenship through their negative acts in consequence of which they are deprived of the privileges and immunities of a free state until the disability arising from the conviction for a felony has been removed. These prisoners may be the outcasts of society, but to say that they are not interested in the welfare of their country, and that prison garb cannot cover a patriotic heart, is far from the truth.

There are nearly thirteen hundred prisoners in the Southern Illinois Penitentiary, about nine hundred of whom are of military age. These men have signed a petition and presented it to the warden praying that they might be given the opportunity to do their bit in the trenches. They are not exceptions. The boys in the other prisons are just as patriotic as the ones at Chester. A conviction for crime is not conclusive evidence that all manly traits are dead.

The United States Government has ruled that persons convicted of crime cannot serve in the army nor in the navy until the disability arising from conviction of crime has been removed. It feels that free men alone should be the defenders of a free state. It is not our purpose to question the wisdom of this ruling; however, it bars every convict from military duty, whatever be the nature of the prisoners' impulses.

We believe that a person who has fallen is on the road to recovery if a direct appeal can be made to the manhood there is in him. If a man cannot fight for his country, he can at least work for it. The man in overalls needs to do his bit just as truly as the boy in khaki. The

¹Clerk Division of Pardons and Paroles of Department Public Welfare. Ph. B. (Univ. of Mich.)

nations will win who have the best food, the largest guns and the most ammunition. That is an imperative call for the entire manpower of the nation. All other considerations are beside the question.

At last a place has been found for prisoners who were worthy of the honor of being allowed to work for their country. There are many plants in the state turning out supplies for the government. All of these are short of help and are asking for more and more workers, and the demand for laborers at last has reached the prison doors.

The question of allowing worthy prisoners the chance to work for the government was taken up with the Labor Departments of the United States and the State of Illinois by Mr. Will Colvin, Superintendent of Pardons and Paroles, and a tentative working plan was agreed upon for the release of prisoners on industrial parole to be served in approved manufacturing plants where their services would be most useful to the nation. This was not to be a prison delivery. It is an experiment and the Department of Public Welfare of the State of Illinois could not take any chances. To show how men have been selected the exact words of Judge James E. McClure will be given as he addressed boys at the Illinois State Reformatory, who have been conscripted for labor. Judge McClure said (in part):

"We have not made these selections by chance. We haven't dropped these names into a hat and drawn them out indiscriminately, but we have spent a lot of time on this matter. This month, as we have done other months, and at other institutions, as well as here, we have gone through these dockets; we have looked in the big book showing your conduct in this institution; we have considered that conduct and behavior. We have looked into the nature of the trouble that you got into that brought you here. We have investigated the crimes, if any, that you committed before you came here, but above all, we have scrutinized your conduct here and how you have behaved, and how you have done your work and what efficiency you have shown; because, if you obey the rules here, if you do your work well here, we consider ourselves safe in risking you to go outside on this work for the government and to do those things which we think you are able to do. Now, that much for the confidence we have reposed in you; that much for the record you have made here, and your release is the reward coming to you.

"Some of you have been here a much longer time than others. Here is one due out August, 1918; here is another out in May, 1919; here's another out in April, 1919; here is another out in August, 1918, and so on. Now, we have brought you all in. We chopped off all that time; in some cases a year off of your time here; and I say we have done that after we have looked into it very carefully. We have put our trust in you. Now this is industrial parole. It is work for the Government. It is doing your bit. The members of this Division of Pardons and Parole are too old to

be accepted themselves in the service. They are trying to do their part as best they can and any way they can. We think one way we can help this Government of ours in this time of distress is to release some of you boys to help out in your way. By releasing you we give you your opportunity to do your bit. The plan is, as you doubtless understand it, to go to some industrial center and do some service under the direction of the Government of the United States and the State of Illinois, which will help this country win this war and at the same time render a service for which you will be paid according to your merit; according to your capacity. You will be under the direction, control and guidance of men who are interested in you just as much as we are.

"I don't know where you will go or how soon. A great many will be sent to Rock Island. Assuming that is where you will go, we expect you to go up there and make good. You will do the work there that you are best fitted to do. We have lined you up and told you these facts in order to ascertain what you are best fitted to do—what kind of a job you had before you came here. We want to know what is the best thing you can do, the second best and what is the third best, and we are going to ask you about some other things, that the State of Illinois and the Government of the United States will want to know when they come to make requisition for you; but before we enter upon that, and with this explanation that I have made as to the purpose of bringing you in here, and as to the plan of sending you out to help our country, with a full appreciation on your part of the confidence reposed, and with a firm resolve that you will make good and be a credit to the State of Illinois, and the Government of the United States, I ask you, do you want to go? Those of you who do, hold up your right hand. (All of them.) Now you have accepted that part of the contract. The next question is to get the information that we want. I am going to request Mr. Searle to ask each one of you for the information that the Government will need, the state will need, and the employer will need, in order to find work for you in the quickest time, that there may be no unnecessary delay. Now then, in answering these questions, don't say you are an expert machinist or molder or engineer unless you are. Suppose you say that you are a machinist, that you can run a lathe. Suppose you say that, when in fact you have only been a helper and never been trusted with a machine. We send you to Rock Island and the employer expects you to do that particular work. You don't have to work over five minutes at that sort of work until he knows whether you know your business or not. Suppose we misrepresent it to him, it comes back to us. We want you to be absolutely truthful and when you answer the questions, just remember that you are answering questions propounded by your Government. Let's be perfectly fair and answer honestly. If you have any trade tell what you can best do and give those trades in the order you can best do them. We want to know what you are best qualified to do. Answer clearly and distinctly.

"This is a thing that I want to impress upon your minds. While in point of service this is like the ordinary parole, yet it is widely different. You leave here knowing where you are going and that we have arranged for you to go to a particular place. There is no doubt, no uncertainty as to what kind of employment you are going to have, or what kind of treat-

ment you are going to receive. We have arranged for that. When we give you this chance we haven't stopped here to let you take pot-luck after you go out. The very best people in the country are going to be interested in your employment and going to help you. There is another thing I want to impress upon you and that is, that nearly all of you are going out ahead of your time. You are doing that because of a special confidence reposed in you. You are going out primarily to do a great service to your Government in which every one of you is interested, and every one of you has looked forward to the time when you would leave this institution and be permitted to enjoy the privileges which free men are permitted to enjoy. That great privilege has come to you.

"The honor of the state, the honor of the Government, and of this department, and of these officials, is at stake. The judgment that they have exercised is being weighed in the balance. Your conduct will determine whether it is right or wrong. Your conduct while on parole will determine largely whether other boys, yet confined in this institution, will get the splendid opportunity given to you. If a number of you fail, then the industrial plan will be proclaimed a failure by those who now doubt its practicability. It is a responsibility which we hope you fully appreciate.

"Let me tell you a little story. One hundred and thirty-two boys went out on industrial parole and located in Rock Island. Up to last week, and that is the time I had the last word, one had failed. He drifted back into his old practices. He committed larceny; took some property that didn't belong to him and was arrested. I suppose he is back in Joliet. That disappointed us very much; it is a small per cent, but we hoped none would fail. After we looked into the case we found that at one time he wasn't right mentally and that perhaps accounted for it. I want to tell you what the boys did, one hundred and thirty-one of them. Their hearts are in this proposition and when they heard that one of their fellows flunked, they passed the hat and raised the funds to compensate and pay back to the man that which had been taken by one of their number. That is the attitude of the boys at Rock Island, not from this institution only, but from the other and larger institutions, the penitentiaries. That gave us great pleasure. That is the attitude we want everyone to have. If a fellow is weak and you find him drinking and gambling and not doing his work, maybe you can help him. Just remember that we are all pioneers in this big project, and the success of it means your success and the release of other boys. The state has said it has confidence and you can go out. Don't throw the state down after that. We would not have you come in and listen to us if we were not in earnest about it.

"You are all starting out with a clean slate. Keep it that way. There isn't one of you here, not one of you, however blue you feel at times, but has some one on the outside who is interested in you. Somewhere there is a brother or sister, or mother or wife, possibly a child who is thinking about you and interested in you, and while we want you to make good, those people are praying for your release because they know you will make good. The mother, the wife, the sister, never lose confidence; and don't ever think because you have been in here that the whole world is sore and nobody cares, because they do care and want you to get out. Keep the resolve in your mind all the time, that you are going to do right by the

Government, right by the state and by the officials of the state, by your employer and, above all, that you are going to do the square thing from now henceforth for those dear ones who have never lost confidence in you."

We believe that prisoners never left an institution under more favorable auspices. The first ones were selected in May, and out of a prison population of 4,000 a total of 600 has been conscripted or about 15% of the prisoners. Possibly 1,000 or 25% will be taken finally.

What are the material results? It costs the state \$200 per annum to keep a prisoner. By releasing these 600 persons, the state is making a saving of \$120,000 per annum. No one on parole is getting less than \$4.12 a day, and some earn as high as \$10.00 a day on piece work. It is fair to say that the average earnings amount to \$100.00 a month for all prisoners released, or they are earning \$60,000 a month, with a total of \$720,000 a year.

Have the prisoners lived up to their high ideals? Let the record answer this question. Six hundred have been selected and there have been five parole violations, or these prisoners have made 99% good. This is a record that cannot be surpassed. Here are the elements that entered into this successful conscription of labor. The men were carefully selected for the work; the place of employment was just as carefully selected, with good living wages, and before a prisoner reached his destination his home and living conditions were provided. A good parole agent is on the ground daily to supervise the parolees and to assist them in every possible way, and best of all, every prisoner is animated with the laudable ambition to serve the state and nation. A direct appeal to their patriotism has not fallen on deaf ears.

Careful and sympathetic supervision has justified the parole law which permits this conscription of labor. A street show came to one of the cities where were many paroles. The show had with it the usual number of parasites and law breakers. A theft was committed and an effort was made to fasten the crime on a paroled man. The charge was shown to be groundless through the detection of the real culprit.

A colored man rather than lose time from his work sent for some of his friends and relatives to visit him. The neighbors lived close, the talk and laughing was a little boisterous, and the hours kept were a little late. An officious policeman arrested him because he was a parolee. After a careful investigation of the case he was released by the orders of the chief, who was big enough to see that no crime

was committed even if some people are a little sonorous in their enjoyment. A large capacity for enjoyment is not *per se* a crime.

One prisoner who was a deficit of \$200 a year to the state is now earning \$6.00 a day as foreman, inspecting shells. Two others make between \$6.00 and \$7.00 a day assembling machinery, and two have drawn salaries of \$10.00 a day.

There are few who have been out sixty days who have not had their salaries increased. Numerous reports have come in as to the success of the experiment, and there are no objections. One large firm has offered to take one-hundred just like those that have been sent, pay the customary wages, and has volunteered besides to pay the wages of another parole agent to stay on the ground and give his entire time supervising, aiding and counseling the parolees.

Under a definite sentence law this work could not obtain. Under that act, when a man has finished his time, he is done with the state and it has no further hold on him. The definite sentence has but one purpose—to punish an offender, but there it ends its work.

The parole law punishes the criminal, and besides it reforms him by taking a personal interest in him when the prison doors have been opened. It assists him in securing employment that makes him a self-sustaining citizen. That removes the incentive for crime. Illinois is fortunate in having one of the best parole laws in the nation, the one passed under the progressive Lowden Administration, and which became effective July 1, 1917. Under this law, every prisoner becomes eligible to consideration for parole under certain stipulated conditions, his release depending upon his crime, his conduct and the probability of his not returning to a life of crime.

The reader may ask if the good conduct of the labor conscripts will be maintained? Let this question be answered by asking one. Why do many persons ever reach the prison? Idleness and bad companions would be found as the great contributors to that end. Many persons of good ability are not in profitable positions because they do not seem to have the faculty of finding the places that they are best adapted to fill. An idle person naturally finds bad companions. Good citizens are not idle.

Remember all of the persons that have been conscripted for labor have been carefully selected. Mr. Will Colvin, Superintendent of Pardons and Paroles; Mr. James E. McClure, Assistant Director of the Department of Public Welfare, and Mr. John L. Whitman, Superintendent of Prisons, with their assistants, have been most painstaking in choosing the men. Not a man leaves the prison until ar-

rangements have been made for his profitable employment, with suitable lodging, boarding, etc. Every man has careful and sympathetic supervision.

When nearly every incentive to go wrong has been removed, is it not reasonable to believe that the parolee will go right? Many persons find themselves in prison not through choice, nor through criminal instincts, but on account of having the wrong environment. Make a suitable environment as has been done with the labor conscripts and the metamorphosis from a convict to an honest, industrious citizen will be found not a physical and mental impossibility.

THE HOMICIDE CONCEPT

A STUDY IN COMPARATIVE CRIMINAL LAW

CHARLES SUMNER LOBINGIER¹

The substantive criminal, as well as civil, law of most advanced nations differ less radically than their divergent legal terminology might imply. One who has dealt with two of such systems recently wrote:

"In the course of some twenty years' experience, I have found that, historical accidents apart, the differences between large portions of French and English Law are little greater than is necessarily incident to the expression of the legal concepts of one country in the language of another."²

On some points of conception and classification, however, material differences exist and not infrequently these have a practical bearing which is reflected in diverse theories of punishment. Such is the case as regards certain phases of the homicide concept.

The Roman Law, like the Anglo-American, recognized the division of this crime into justifiable, excusable, and felonious,³ though not under those terms, and substantially the same classification has passed into the Modern Civil Law. But in further analyzing the third form—felonious—a divergence appears.

ANGLO-AMERICAN LAW

The English common law has always treated homicide as including two separate crimes, viz., murder and manslaughter, the distinguishing ingredient of the former being "malice" or felonious intent.⁴ Murder was not a divisible offense at common law nor until the enactment of the Federal Penal Code,⁵ was it such under the Federal law of the United States,⁶ but the statutes of many states prescribe

¹ Judge of the United States Court for China.

² Sir W. Bruyate, Judicial Adviser to the Egyptian Government, in his first Report; quoted in Journal of Society of Comparative Legislation XVII, 281.

³ Mackenzie, Roman Law (7th ed.), 415.

⁴ *This is the grand criterion* which now distinguishes murder from other killing; and this malice prepense, *malitia pœ cogitata*, is not so properly spite or malevolence to the deceased in particular, as any evil design in general; the dictate of a wicked, depraved and malignant heart." Blackstone, Commentaries, IV, 198*. See also Harris, Criminal Law (3d ed.) 135, 139.

⁵ Sec. 273. See the note thereto in Tucker & Blood's edition.

⁶ *U. S. v. Outerbridge*, 27 Fed. Cas. No. 15, 978, 9, Sawy. 620; *Bias v. U. S.* 3 Indian Terr. 27, 53 S. W. 471.

degrees of murder according to the circumstances under which it is committed. Thus, premeditation is frequently the distinguishing mark of murder in the first degree,⁷ while the second degree is often identified by the absence of a specific intent to kill.⁸

Manslaughter,⁹ however, was graded at common law into voluntary and involuntary,¹⁰ the latter being distinguished by lack of intent.¹¹ Thus the commission of a lawful act in an unlawful manner, as negligently, may, if death result, constitute involuntary manslaughter.¹² But the absence of intent greatly mitigates the offense and reduces the penalty¹³ and, as a leading English author well says:

"Cases of mere carelessness, etc., legally amounting to manslaughter, are often more appropriately punished by pecuniary fine than by the indignity of imprisonment."¹⁴

ROMAN LAW

On the other hand the Roman law had but one crime of this nature, viz., *homicidium* (with its aggravated form of *parrolicium* or slaying of a relative) and this originally was purely a crime of intent.¹⁵ Thus, fatally wounding another with a sword was *homicidium*; but striking him with an iron key was not, even though the result should prove equally fatal.¹⁶ And the reason for the distinction lay in the fact that the former was a deadly weapon whose employment implied homicidal intent.¹⁷ So the crime was only complete when an intention to kill was manifested by an overt act.¹⁸

Negligence resulting in death is mentioned as early as the Twelve Tables, but not as a crime, nor was it visited with a serious penalty. "One who slays another accidentally," it is declared,¹⁹ "shall provide a

⁷ Cyc. XXI, 720 et seq.

⁸ Id., 731.

⁹ The classical American definition is that of Shaw C. J., in *Commonwealth v. Webster*, 5 Cush. (Mass.) 295, 52 Am. Dec. 711, as follows:

"Manslaughter is the unlawful killing of another without malice; and may be either voluntary, as when the act is committed with a real design and purpose to kill, but through the violence of sudden passion, occasioned by some great provocation, which in tenderness for the frailty of human nature the law considers sufficient to palliate the criminality of the offense; or involuntary, as when the death of another is caused by some unlawful act, not accompanied by any intention to take life."

¹⁰ Blackstone, Commentaries, IV, 191*, 192*; Harris, Criminal Law (3d ed.) 140, 141.

¹¹ Harris, *ubi supra*, 141; Cyc. XXI, 760.

¹² Blackstone, Commentaries, IV, 192*; Harris, Criminal Law (3d ed.) 141.

¹³ Stat. 24 & 25 Vict., c. 100, sec. 5.

¹⁴ Harris, Criminal Law (3d ed.) 142.

¹⁵ Hunter, Roman Law, 1069.

¹⁶ Justinian's Digesta, XLVIII, VIII, I, III.

¹⁷ Hunter, Roman Law, 1069.

¹⁸ Paulus, Sentencias, V, XXIII.

¹⁹ XII Tables, VIII, 24.

ram to be sacrificed in his stead." This, as observed by Pliny,²⁰ was in striking contrast to the imposition by the same table²¹ of capital punishment for the relatively moderate offense of "nocturnal trespass and larceny of crops." Nor does there even appear to have been a civil liability in such a case. For it was observed in a leading case under the Modern Civil Law:

"That, as a general principle, no such rule prevailed under the Roman law, we think, may be affirmed. If it existed, it has escaped the research of Gibbon and of Makeldy; and the diligence of counsel has referred us to no text or commentator which authorizes the opinion that the action was allowed. The Aquilian law gave actions for injury done by the death of slaves and certain animals, which it mentions by name. The title '*de his qui offenderint vel dejecerint*,' thus provides for the case of a free man killed by something being thrown in the public way from a building. If it is a free man who has been killed, '*damni aestimatio non aestimatio fieri potest*'; but in this case the fine is of fifty pieces of gold. ff. lib. 9, tit. 3, par. 3. The law *de suspensis* is to the same effect, and had for its object the prevention of accidents in the public way. They were penal laws, and the special provisions they contain are rather in affirmance of the non-existence of the principle which would give an action to the heir for damages caused by the death of his ancestor.

"Far be it from us to undertake to state affirmatively, that any given text is not to be found in the mass of matter composing the *corpus juris civilis*. Finding no rule laid down in any of the elementary writers on which the action could be maintained, and bearing in mind the principle so frequently recognized in the Digest, that the life of a free man cannot be made the subject of valuation, we thought that an action of this kind could not be maintained under the Roman law. Digest 14, tit. 11, De lege Rhodia de jacta, par. 2, 1. '*Jacturae summam pro rerum pretio distribui oportet. Corporum liberorum aestimationem nullam fieri posse.*' Digest 9, tit. 1, par. 4."²²

The development of the idea of *culpa* (fault or negligence) under the *lex Aquilia* supplied this deficiency to some extent in other cases;²³ but it was not, until the period of the Empire that death caused by negligence was punished as a crime.²⁴ And the punishment even then was a relatively light one, being *relegatio* the mildest form of banishment which might be for a time only and without forfeiture of goods.²⁵

²⁰ Hist. Nat. XVIII, III, XII.

²¹ XII Tables, VIII, 9.

²² Eustia C. J. in *Hubgh v. New Orleans & Carrollton R. Co.*, 6 La. Ann. 495, 510.

²³ "Under *culpa lata* is comprehended not only wrong caused wilfully and intentionally, but also wrong caused by simple imprudence or simple neglect, when it is *gross*." Mackenzie, Roman Law (7th ed.) 209.

²⁴ Hunter, Roman Law (5th ed.) 1069; Justinian's Digesta, XLVIII, VIII, IV, I.

²⁵ Hunter, Roman Law, 1065.

THE MODERN CIVIL LAW

It was thus that the doctrine of negligence, in its criminal aspect, passed into the modern civil law. It has always been treated there as distinct from the ordinary crime of homicide and penalized more lightly. Thus in the French Penal Code all voluntary homicide is defined as "*meutre*"²⁶ but if committed with premeditation or ambuscade it becomes "*assassinat*"²⁷ and is visited with capital punishment.²⁸ On the other hand involuntary homicide, including that caused by negligence, is treated in a separate part of the code²⁹ and is punished with imprisonment from three months to two years and a fine of from fifty to six hundred francs.³⁰

Similarly under the Spanish Penal Code intentional homicide is "*asesinato*" if accompanied by certain circumstances like premeditation, treachery, etc., and may be punished capitally.³¹ In the absence of these the offense is merely *homicidio*, punishable with imprisonment only.³² But all cases of death resulting from negligence alone are relegated to a distinct title (XI) of the Code where they are grouped with other offenses thus resulting and given a light term of imprisonment with a maximum of six months.³³

Chapter XVI of the German Criminal Code defines murder as the killing of a person "intentionally and with premeditation" and imposes capital punishment therefor.³⁴ Intentional killing without premeditation is treated as ordinary homicide and visited with a maximum "penal internment" of five years.³⁵ The last article of the chapter is devoted to death resulting from negligence for which "confinement not exceeding three years is provided."³⁶

The Penal Code of Japan, like its other present codes, was modelled upon that of Germany which, like the French and Spanish, is a Civil Law instrument. Chapter XXVI of the Japanese Penal Code treats of (intentional) homicide which may be given capital punishment.³⁷ But Chapter XXVIII covers "involuntary (accidental)

²⁶Art. 295.

²⁷Art. 296.

²⁸Art. 302.

²⁹Title II, Ch. I, sec. III.

³⁰Art. 319.

³¹Spanish (also Philippine) Penal Code, art. 403.

³²Id., arts. 404, *et seq.*

³³Id., 568.

³⁴German Criminal Code, Art. 211.

³⁵Id., Art. 212.

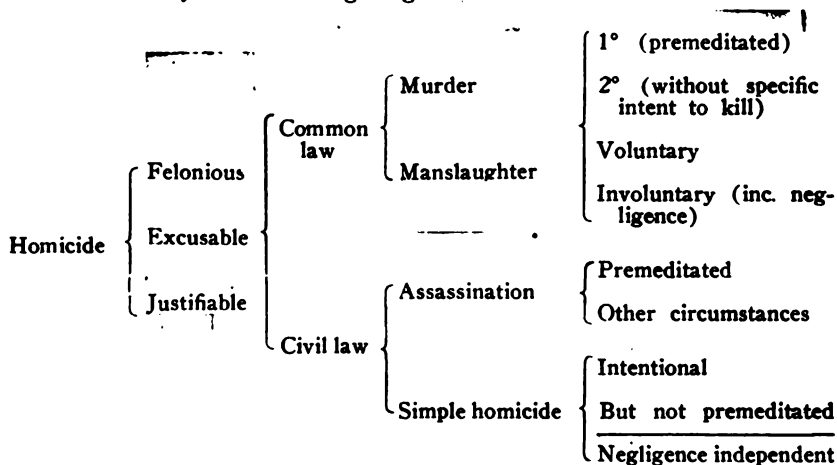
³⁶Id., Art. 222.

³⁷Japanese Penal Code, Art. 199.

homicide" which is "punished with a fine not exceeding one thousand yen."³⁸

The "Provisional Criminal Code" of China is largely a copy of the Japanese. Chapters XXVI and XXVIII of the latter have been combined into one (XXVI) but the two concepts of intentional and involuntary homicide are still kept entirely distinct. Thus Art. 311 penalizes "murder," i.e., premeditated homicide—with death by penal servitude; while Art. 313 imposes the latter penalty for injuries resulting in death. Such injuries must, however, be intentional, for such alone constitute an offense "except in the case of negligence"³⁹ which, as in the other codes above mentioned, is treated separately.⁴⁰

It will thus be seen that homicide as a civil law concept remains essentially a crime of intent while in common law jurisdictions, homicide includes, under its subclass of "manslaughter," unintentional and involuntary acts which, if the other system are treated as negligence and penalized lightly. The relation between the two systems may be made clearer by the following diagram:



³⁸Id., Art. 210.

³⁹Provisional Criminal Code of China, Art. 303.

⁴⁰Id., Arts. 324, *et seq.*

PROPOSED STATE OF ILLINOIS CO-OPERATIVE PLAN FOR PRISON MANAGEMENT

JOHN L. WHITMAN

Under a co-operative plan for prison management, the Division of Prisons in The Department of Public Welfare of the State of Illinois, proposes to adopt methods embracing all the practical ideas advanced in the operation of the so-called honor and self-government systems and adding to them important features that have to do with the actual building of character, the promoting of a feeling of respect for the law and the preparation of convicts while in confinement so that with a correct viewpoint of life, and in the proper attitude of mind, they can enter society and assume the duties and responsibilities of citizenship.

The management of a penal system is just as much a business proposition as is the business that supplies the needs or necessities of life to its patrons, whether they be stockholders or not. In fact, the management of the prisons has an effect upon the whole people. The prisons are either manufacturing good citizens out of raw or waste material, or they are without a proper knowledge of how to use the material at hand, turning out a product that has not only been made less valuable by the handling, but has been converted into a real menace. Consequently, it is of the greatest importance that a plan of organization be adopted that will bring about the best results obtainable to all concerned. This can only be done after a thorough study has been made and an intelligent analysis of the material necessary to be used has been completed. Then, inasmuch as, in this business the material to be handled is humanity and the patrons to whom the products of the business must be furnished is also humanity, the co-operative plan of conducting the business seems to be the most comprehensive,—and when the condition of the material to work with is considered, seems to be more practical than the system that puts the unfinished products or the unprepared man without proper training or development upon his honor, or to be a part of a so-called self-government system.

How the individuals who are brought under the ban of the law can be appealed to by the administration of the law, is a question that nowadays seems to attract the attention of all good citizens and demands the closest attention and study of the administrators of the

law. The strictly punitive method that provides but one treatment for all alike and does not recognize or arrange for the classification of individuals, has proven to be a failure. Other methods have been carelessly thought out, hastily approved by some, then put into operation, with only partial success. Perhaps because of a lack of understanding on the part of prison officials of the conditions apt to be created by some classes convicted of crime. In fact, absolute failures have been made, which have increased the difficulties to be overcome in formulating or adopting plans or policies that would carry out the expressed intention of the law, which says in part that such methods shall be adopted "as will prevent them from returning to criminal courses, best secure their self-support and accomplish their reformation."

To do this, there must be an exhaustive, careful and intelligent study made of each individual, so that all will be understood, their weaknesses recognized and the treatment prescribed that will meet their individual needs, whether it be a treatment for their physical or mental health, or to overcome a lack of proper training, the effect of bad environment, insufficient education, habits of idleness, or any of the many other things that tend to contribute toward delinquency and crime.

After the individual needs have been recognized and treatment prescribed, the prison management should be organized under a plan that would insure the careful attention of all officials in the administration of the prescribed treatment. It is of the greatest importance to the state that the intention of the law, as quoted above, be carried out, which really means that the penal system is expected to enter into the business of making men out of broken, twisted lives. It is a business, which, if successfully carried on in a practical way under a proper plan will bring the best sort of returns to the state by way of a better citizenship.

Those that succeed in other lines of endeavor, in business or a profession, do so only after they have made a thorough study of their business or profession and have become proficient in it. Those in business deal with commodities;—those in charge of the management of our penal institutions, deal with humanity. If it is necessary to study commodities in order to be successful in handling them in a business way, how much more necessary is it in handling humanity to study and understand all of the various characters and moods they are apt to be in at different times, in order to be successful in bringing about the best results. It has only been during recent years that any

such study has been made in the matter of handling the so-called criminal classes in our penal institutions. Practically no well defined method or plan has been adopted that would give proper consideration to the proper classification and treatment of prisoners in our penal institutions. Whatever method or plan may be adopted, if good results are obtained, must insure the co-operation of all concerned.

Our prisons are public institutions; the whole people are or should be interested, for the reason that results whether good or bad have a direct effect upon them. A co-operative plan that enlists the hearty co-operation of all interested, over the prisoners themselves, comes nearer being an ideal plan than any that has yet been put into operation or suggested.

The commercial business conducted on the co-operative plan has what every one declares to be a very commendable object, and, as the business grows and is successful, all the investors, large or small, as well as the patrons realize upon the profits accrued. Not only in a financial way, but inasmuch as the commodity manufactured or handled is apt to be one that is a necessity to the patron, in order to become a full beneficiary, he makes himself at least a small stockholder and has a voice in establishing the policies of the business and gives information to it that will enable the officers of it to prepare for and supply that which most effectually and economically meets his needs, which, in a measure at least, are indential with the needs of other patrons.

While this plan gives opportunity for working up a highly satisfactory and profitable business to all large or small investors and provides even for the small investors the chance to be heard and his especial needs to be considered, yet, the manner in which his needs and the needs of all of the others may be supplied is determined by those chosen to adopt the policies and direct how they shall be carried out. This is done by a board of directors and officers of the business who may and should be large stockholders; but they are chosen because of their experience and special fitness for their duties. They are held strictly to account and are responsible to the stockholders for the good conduct of the affairs of the business. Consequently, while the co-operative plan provides for the patrons or small stockholders to have a voice in the business, the organization of the business is such that control is held by those who must consider the interests of all concerned and protect the fundamental policies of the business.

The organization of a co-operative plan for prison management as compared with the plan for the commercial business would be that

the state (which means all of the people), is the initial investor, organizer, principal stockholder, and president of the board of directors, which in this case would be The Department of Public Welfare. This department, made up as it is of men, who, because of their years of experience have become convinced of the possibility of manufacturing out of otherwise waste material a really good citizenship for the state, are in reality heavy stockholders in this business of prison management for the public welfare. The prison officials or employees directed and trained in such a line of thought are attracted and convinced that a business organized on a co-operative plan for such a purpose is not only feasible, but offers to the investor a career for future usefulness and they soon become stockholders and are an essential part of the organization. One class of patrons of this business are the prisoners. They represent the element most in need of the benefits of the organization and through whom benefits come to the stockholders, large and small (the whole people).

It is for the purpose of supplying needs to this element that the business of prison management was organized. Consequently, every endeavor should be made by the officers and employees to enlist the prisoners as subscribers for stock in the business, thereby gaining their co-operation. Once they become actually convinced that the business furnishes products that they are in need of and can benefit by, they see the advantage of being stockholders and become such. Then, they are interested in the business as a patron stockholder is in a commercial business, but, in reality have more to gain in a substantial way. They are under this plan co-operative partners in the business and in as practical a way as the patron stockholder who has a voice in a commercial business, they reveal their weakness and the supplies needed to gain strength and stability, which are all considered; but while those supplies are being furnished, or, in other words, while they are undergoing treatment for the weakness displayed, they are under the control of the governing body of the business whose wisdom dictates just what supplies and what treatment will most effectually produce the desired results.

The patron stockholder in a commercial business buys the goods he needs a little cheaper and gets a chance to clip a coupon now and then; but the prisoner stockholder gets his needs supplied for his co-operation in the business of prison management and the chances for a future useful career made possible. He has within his grasp because of his connection with the business a citizenship, which having earned has also learned how to appreciate and protect by proper living. In

the meantime (this being a typical case), the state has realized upon its investment in the business of prison management. Not only that there have been returns, so far as a better citizenship is concerned, but the chances are, in a financial way.

One of the big problems presented to prison management to be solved is the industrial feature. Under such a co-operative plan as described here, the industrial feature of a prison presents less of a problem. How this works out is a subject for separate discussion. Under a co-operative plan, the following outline of a scheme for classification of prisoners fits in:

First. Proper treatment of the mentally and physically sick.

Second. Classification according to needs and abilities of the individual inmates.

Third. A progressive merit system working toward freedom.

This progressive merit system being a thing that is entirely visible to prisoners, serves to maintain discipline and promote industry, as well as fit them for useful careers in after life, and is practically carrying out the expressed intention of the new law, as quoted above, as well as the old law, which recognized the fact that a great majority of prisoners ultimately return to society, which makes it necessary to regard their confinement as a period of training for the duties and obligations of citizenship, rather than as a period of punishment for past failures.

Modern thought concludes that the causes of crime are exceedingly complex and include physical and mental health, training, environment, habits and education. All prisoners should be thoroughly examined upon being committed and a determination reached in the individual cases, as near as may be, of the underlying causes, and when that is done a treatment determined upon—the treatment that would most effectually meet the needs.

In addition to treatment for physical and mental ills, it is important that proper training be given and habits of industry taught. In fact, from the date of commitment, until they have demonstrated their fitness to be paroled, they should be under instruction and training with the hope of fitting them for the proper sort of citizenship when they will realize their responsibility to society. In this progressive merit system, harsh punishment is no part of the treatment.

After the mentally deficient ones have been segregated and the physically ill considered, then all others are assigned to a group or

class, being closely observed as to their inclinations and are under rather rigid discipline or restraint; at any rate, are given no responsibility. It is possible for them to work out of this class into a second class in a short time where they are given some responsibility and where they begin to show their weakness; perhaps because of bad conduct or lack of application to industry, they slip back into the first class. Then comes the opportunity for real educational work. We know them then and know what to do to help them get permanently fixed in class two, where real progress begins. It is at this time they also begin to earn consideration for parole and realize fully that whatever consideration they get is due to merit only. They begin also to understand something about the length of time it will take them to undergo the treatment necessary to fit themselves for parole and decent citizenship. Then gradually the prison restraint is removed and they are placed more and more upon their own responsibility. They have, up until this time, been under the restraint of prison walls and more or less reliant upon prison rules. However, they have graduated out of cells into small dormitories and have thus far shown their ability to adapt themselves to a progressive merit system. Now the authorities can well afford to test them as to their ability to govern themselves and their reliability when placed upon their own responsibility, living as villagers with prison walls removed, the test being that they, in small groups living in cottages, can demonstrate their ability to adapt themselves to community life.

After this test, parole is in sight and they are sent to distant parts of the penal farm to work and live, with reasonable assurance that they will keep inviolate the trust imposed in them; they having been taught how to accommodate themselves to social rules and been placed in the right attitude of mind.

OPERATION OF THE NEW PAROLE LAW IN ILLINOIS

JOHN L. WHITMAN²

Few persons in Illinois have any understanding or knowledge of the vast changes which have come about since the first of July last year in the administration of the new parole law. Without attracting any considerable amount of public attention changes have been brought about in the parole system which practically revolutionize it. The results already are so apparent that we who are entrusted with the parole work in Illinois feel that the new plans are now safely set upon a solid foundation.

Illinois has been a pioneer in many penal enactments. Our state was one of the first to adopt the parole system. It was also one of the first to adopt probation laws. It was actually the first state to enact Juvenile Court laws, and last but not least in importance, a new Civil Administrative Code, which brings into being a Department of Public Welfare, embracing all that the name implies.

It will be the aim of the present administration to keep Illinois in the foreground in all such matters.

Illinois passed its first indeterminate sentence act and parole law in 1895. That act was amended in 1899 by giving the paroling power to the State Board of Pardons instead of to the Penitentiary Commissioners and the Wardens. The Penitentiary Commissioners and the Wardens constituted the paroling power for the four years between 1895 and 1899.

The Act of 1899 remained practically without change until the legislative session of 1915. In that session a small step was made toward a parole for what is known as definite sentence crimes. The short step made in 1915 was broadened in the 1917 session when the legislature revised the whole parole act. The present act became effective July 1, 1917.

At the Prison Congress last winter at New Orleans I heard the present parole law of Illinois described by persons who have devoted their lives to prison work as one of the very best laws in effect at this time in any of the states. The present parole act was not a compromise. It was carefully prepared in the Attorney General's office.

¹Read at the meeting of the Illinois Branch of the American Institute of Criminal Law and Criminology, at Chicago, May 31, 1918.

²State Superintendent of Prisons, Springfield, Ill.

It was introduced late in the session and finally was passed in about the form in which it was originally introduced.

Much of our legislation in its finality is a result of compromises reached in long legislative sessions after extensive hearings before the House and Senate Committees. This is not true of the parole act. The good things that are found in the present act probably could not have been obtained in long drawn out committee hearings. In its passage the parole law received the unanimous vote of the House and the Senate.

In a brief manner I shall attempt to call attention by comparison to some of the features of the present law. Murder, rape, treason and kidnaping remain definite sentence crimes in Illinois. Under the old act of 1899 these crimes were not paroleable. The new act creates a separate parole system under which persons sentenced for the crimes of murder, rape, treason and kidnaping may be paroled when certain conditions are met. A life sentence murderer may be paroled when he has served actually twenty years of his sentence. This does not mean that he shall be paroled at the end of 20 years.

In all definite sentences the prisoner is made eligible to parole when two conditions are met. First, the prisoner must serve the minimum time fixed by law for the crime. Secondly, he must serve one-third of his sentence before he is eligible to parole. For instance, under a 14 year murder sentence the prisoner must serve a minimum of 8 years and 3 months which is the good time for 14 years. A third of 15 years is 5 years, and yet at the end of 5 years the murderer with a 14 years' sentence would not be eligible to parole, because he has not served the minimum. If it was a 15 year sentence for rape, the minimum of which is one year, the prisoner is eligible to parole when he has served one-third of the 15 years, or 5 years.

As another example, take a 45 years' sentence for murder the minimum for murder having been served in 8 years and 3 months, the next requirement before this prisoner becomes eligible to parole is that he serve one-third of the 45 years, which is 15 years. As it takes under the good time law 23 years and 9 months to serve a 45 years' sentence, the net result is that this prisoner would be permitted, in the event of parole being granted, to spend the last 8 years of his sentence upon parole outside the walls. All definite sentence paroles, under the rules of the Division of Pardons and Paroles, are for the maximum time. A rule provides that for the first two years on parole the prisoner shall report monthly; the third and fourth years, quarterly; the fifth year, semi-annually, and thereafter annually.

In a meager way the first start toward parole for definite sentence men was made in the 1915 session of the General Assembly. Under the system which had grown up through twenty years men who had grown old and gray in the prisons on homicide sentences could not be reached. In Chester and Joliet at that time there were upwards of 100 nearing the end of life's goal. A commutation or pardon offered the only relief. Under the system which had grown up through the various years not to exceed twenty commutations were to be granted each year. It had been customary where a prisoner who had served a long sentence and who had decent relatives upon the outside who wished to take him home and care for him during his last days, to grant a commutation. Things of this character used up the year's twenty commutations to such an extent that relief for persons who were about to die could only be furnished to four or five men each year, no matter how deserving their cases might have been.

Under the 1915 enactment, running from July, 1915, to July, 1917, definite sentence paroles were granted to forty men. Of that number 39 were homicide cases. The fortieth was a thief serving a lifetime sentence in Chester for robbery with a weapon. He had served 23 years in prison. He fell within two months after being released upon parole. Up to this time, which is now nearing three years, there has not been a single report of misconduct made against any one of these 39 sent out upon definite sentence parole. Since July 1, 1917, when the powers for definite sentence parole were considerably enlarged, quite a few other men have been released and not a report of misconduct has been received against any one of these. I am using this as an illustration of the value of supervision under a parole rather than to have these men serve their time in full inside the walls and then go upon the outside without help or guidance. This record also illustrates another important thing. It is this—persons who have had an unfortunate circumstance such as homicide come into their lives are not the dangerous men who come out of prisons. (Davy Hogan story.)

The Civil Administrative Code, also passed by the last General Assembly and the new parole law work admirably together. Under the Civil Administrative Code the former Board of Pardons was abolished and the administration of all laws heretofore administered by the Board of Pardons was given to the Department of Public Welfare, which is made up of a director, an assistant director, and six divisions, which are presided over by the following: An alienist, criminologist, fiscal supervisor, superintendent of charities, superintendent of prisons, and a superintendent of pardons and paroles. These various activities

are known as divisions. In creating the Division of Pardons and Paroles the Department of Public Welfare assigned to that work the assistant director, the criminologist and the superintendent of prisons to assist the superintendent of pardons and paroles.

The Division of Pardons and Paroles holds regular monthly meetings at the two penitentiaries and at the reformatory. In the biennial period of two years upwards of ten thousand cases are passed upon in one form or another by the division. In the penitentiaries every prisoner is eligible to a hearing before the Division of Pardons and Paroles when he has served his minimum, provided he has not served one or more prior terms. At the reformatory the system works differently. Each boy there is eligible to a hearing when he has six good months of service to his credit. At that time his case is carefully considered and there is fixed for him to serve a certain number of good months. The Division of Pardons and Paroles looks upon Pontiac as a reformatory. In the main 36 good months is the maximum for all crimes there except robbery with a gun. In crimes of violence the time may be set for any number of good months between 36 and 60. Good months may be earned by exemplary conduct on the part of the boy and by efficiency shown in shop and school. If a boy cannot come to a realization of himself in making a 36 good months' sentence, which sometimes takes him from 40 to 48 actual months, the Division of Pardons and Paroles feels that the reformatory has exhausted its resources and that longer incarceration there will be of no benefit to him. It is for that reason that the boys are given an opportunity at the end of short sentences to go upon the outside and demonstrate while on parole their fitness to go back into the world. If they fail after that the penitentiary is the place for them.

At this point I want to call attention to the new commitment features contained in the present parole law. Every male person between the ages of 16 and 26 years, except in capital cases, may, in the discretion of the court, be sentenced to the reformatory instead of the penitentiary.

Every male person between the ages of 21 and 26 years, who has previously been sentenced to the penitentiary or reformatory in this or any other state, may, in the discretion of the court, be sentenced to the penitentiary instead of the reformatory.

Apparently these features in the new parole law are not fully understood by committing judges. Formerly the age limit at Pontiac was 21 years. In raising the age limit at Pontiac to 26 years there seems to have resulted confusion. When carefully read the law is

very plain. A boy who has served a sentence at Pontiac of from 30 to 36 good months and who gets in trouble a second time, probably for robbery with a gun, should not be recommitted to Pontiac. In his first incarceration there the reformatory did all it could for him. On the other hand, I have found quite a few cases since becoming superintendent of prisons now a little less than a year ago, of boys committed to the penitentiary, who, under no conditions or circumstances, should have been sent there by the committing court. In one instance I remember the boy was but 18 years old and yet he was in the penitentiary for his first offense.

Considerable leverage in transferring from Pontiac to the prisons and from the prisons to Pontiac is given by the new law. Despite all that is possible to be done for the good of the individual under the powers of transfer, the committing judges, by giving thought to these things, could render great service to the state and the individual by committing to the place best fitted, as the law contemplates. In the vast bulk of work done by the superintendent of prisons and by the Division of Pardons and Paroles we are not able to reach questions of transfer the day, or even the week or the month, following the boy's arrival at an institution which is not best suited for him. The machinery for transferring is somewhat cumbersome. Made so by the necessity of returning the individual to the trial court, and the preparation of a petition to be filed ten days before the hearing, setting out all the reasons why the transfer should be made. The proper commitment in the first place would eliminate this cumbersome method.

In this connection I want to call attention to another important feature in the new law which does not seem to be wholly understood by the committing judges. It is this: "Every male person between the ages of 16 and 21 years, who shall be adjudged guilty of an offense punishable by imprisonment in the county jail, may, in the discretion of the court, be committed to the reformatory for the jail imprisonment only, instead of the county jail, for not less than the minimum nor greater than the maximum term provided by law for the offense of which such person is convicted."

This feature was purposely placed in the new parole act. The purpose is stated exactly in the language of the new act. It was the purpose to take boys between the ages of 16 and 21 years out of small county jails, oftentimes filthy and frequently filled with older persons hardened in crime.

Committing judges interpret this language to mean that they should fix a definite sentence in these cases, and in consequence boys

are coming to Pontiac at this time to serve sentences for 30, 60 and 90 days. They are deprived of the benefits of the parole act. In addition, the reformatory is deprived of its opportunity to benefit the boy who is committed there in this manner. Sentences of this description are destructive to the reformatory and its purposes.

Varied views are held by the committing judges as to their powers under the new parole act. Section 2 of the new act makes it plain that except for the crimes of murder, rape, treason and kidnaping "every sentence to the penitentiary or reformatory, and every sentence or commitment to any other state institution now or hereafter provided by law for incarceration, punishment, discipline, training or reformation, shall be a general sentence of commitment, and the courts imposing such sentence or commitment shall not fix the limit or duration of such imprisonment."

This portion of Section 2 of the Act when read in connection with section 6, fixes, in effect, a minimum of one year for all crimes in which the statute does not provide a minimum punishment. Among other things section 6, and I am now quoting from that section, says:

"No prisoner or ward sentenced or committed under a general or indeterminate sentence, shall be eligible to parole earlier than one year after his or her commitment in said penitentiary or reformatory or state institution in this act mentioned, nor until he or she shall have served the minimum term of imprisonment provided by law for the crime or offense of which he or she was sentenced and committed."

It happens that in a few crimes, such as conspiracy, crimes against children, crimes against nature, and a few others, that the statutes do not fix a minimum punishment. Some years ago the Supreme Court held that in these crimes where no minimum punishment was fixed that the jury or the committing judge should fix a definite sentence. It was to meet this situation and make all crimes indeterminate except murder, rape, treason and kidnaping, that the Legislature made the provision I have just quoted above in section 6. It was the purpose of the Legislature in this section to provide in a general way a minimum term of imprisonment for persons convicted of crimes, the minimum punishment of which is not provided in statutes which read that the punishment shall not be greater than three years or five years. With a few exceptions, the statutes fix punishment of from one year to ten years, or from one year to twenty years.

While every person is eligible, under the rules, to have a hearing before the Division of Pardons and Paroles when he or she has served the minimum time, it does not necessarily follow that these persons

are to be paroled at the end of the minimum time or when they have their hearing. Many persons not understanding the work done by the Division of Pardons and Paroles, believe that practically every person is paroled when the minimum has been served. This belief is far from correct. After a hearing a prisoner may be required to serve any number of years up to his maximum. All prisoners automatically appear upon the docket for hearing at the end of their minimum time. After a case has been heard the prisoner receives a ticket saying it is ordered that you shall be released upon parole one year, two years, five years or ten years, as the case may be, from the date of the hearing "provided your conduct remains good until that time and that no new matter is discovered in your case." It does not take the service of an attorney to get the original hearing for the prisoner nor to obtain for him a rehearing of his case. Hundreds of cases are taken up every year and rehearings granted merely upon the letters written by the prisoners. If the prisoner is not capable of writing his own letter there are other prisoners who will write for him and, in addition, he can make a request for a rehearing through the warden. Rehearings are granted by the division willingly for the reason that it furnishes opportunity of keeping in touch with the prisoners, observing their attitude of mind, and giving encouragement when they are making efforts to justify a reconsideration of their case; and also to give them an understanding of what progress they must make before they are really fit subjects for parole.

Under new plans inaugurated by the Division of Pardons and Paroles for the visitation and handling of persons while upon parole upwards of 2,500 paroled men, boys and girls are being visited by the state parole agents each four weeks. The new plans, while yet in embryo, are working so satisfactorily that the old system for handling persons upon parole appears to have been a farce. Under the old system the parole agents worked under the directions of the wardens. Each agent simply looked after persons who were upon parole from the institution which paid his salary. The wardens were not specially interested in the welfare of the person upon parole, chiefly for the reason that the public mind charged the failures while upon parole to the former State Board of Pardons, the Board of Pardons having made the parole order.

Under the new plans now in operation, all the parole agents for Joliet, Pontiac, and Chester, and the Home Visitors working out of the Industrial Schools at St. Charles and Geneva are under the direct supervision of the Division of Pardons and Paroles.

The state has been divided into 9 districts; an index card has been prepared for every ward, whether upon parole from the penitentiaries, the reformatory or the industrial schools. These index cards are worked into a county file. While the person originally may go to an institution from one county when going upon parole they may go into another county to serve that parole. The agent working in that county, when he has his assignment, receives an index card for every person upon parole in the counties in his district. The index card makes a definite assignment and upon that card he makes a report each month.

Under the old system the agent was merely told that there were from three to four hundred persons upon parole, scattered throughout the state from that individual institution, and it was up to him to search the records and make his own notes as to where he would find them. He didn't work under definite assignment and in consequence the job was so big that the agent naturally sunk down under the weight and did little of anything except to make trips and return prisoners who had been reported for violations.

Experience teaches that persons upon parole need guidance and that they need some one who can advise them at frequent intervals. Without this advice they soon become discouraged and their first thought is to run away. When a person on parole starts running he hops from one place to another until finally he commits a crime somewhere for which he is arrested and usually convicted. The fingerprints and Bertillon measurements are so well worked out that only in a very rare case does it occur that a person who has served in one penal institution is not identified soon after his incarceration in another.

The chances of ultimate success and return to right living are greatly enhanced by a successful parole period. The person upon parole who has lived properly for a year or more is vastly better fitted to again take his place in the world than he was before.

The parole agent's duty does not end when he has merely visited the prisoner and ascertained from him how he is getting along. It frequently happens that the original employment does not suit the prisoner or else he is not suited to it. A good parole agent will change a prisoner sometimes four, five or six times until he finally gets him into work which he likes and is adapted to.

Before the prisoner is permitted to leave the institution it is also the duty of the parole agent to investigate the sponsor who is to take him upon parole. This is a very important part of the work. By doing this work in advance of the time the prisoner leaves the institu-

tion the opportunity for making an error in the selection of the sponsor is greatly lessened.

In order to obtain closer co-operation between the committing authorities in the various counties and the state paroling authorities it has, under the new plan, also become a part of the parole agent's duty to visit state's attorneys, sheriffs, and county and circuit judges; also chiefs of police in the various towns. With these officers the parole agent discusses the cases of the individuals who are doing their paroles in that particular county. In these discussions he not only enlists the aid of the county authorities in looking after the prisoner, but learns of the various things that may not be for the best interests of the paroled person.

Since becoming familiar with the plans and the efforts made by the Division of Pardons and Paroles to look after wards of the state who are upon parole it is surprising the number of police departments in various towns in Illinois that are now in hearty accord with the work and are lending their assistance to it. I do not know why it should have been so, but, nevertheless, it has been true for years, that men going out of prison upon parole were afraid of the police departments. Under the new order of things this is changing. When men upon parole are trying to do right the assistance of police officials can be exerted to an important end in their lives. The results already obtained in localities throughout the down-state are most gratifying.

The Division of Pardons and Paroles is exerting its energies toward the enlistment of support for its work through every possible channel. At this time there are not to exceed twenty-five persons, including the parole agents, the home visitors and the members of the Division of Pardons and Paroles, actively engaged in the work. There is a limit, of course, to what these twenty-five individuals can accomplish, but if these twenty-five, through their efforts, can interest and enlist each year in their work more state's attorneys, county and circuit judges, sheriffs, chiefs of police and public spirited citizens there can be but one result—a great and real accomplishment and a successful operation of the parole law.

Very recently the Division of Pardons and Paroles has addressed the penal institutions of other states asking to be advised of the names and addresses of persons coming from those states into Illinois to do their paroles and offering to look after them with the Illinois Parole Agents in the same manner as the agents look after persons paroled from the Illinois institutions. As near as can be ascertained there are at times as many as six or seven hundred persons upon parole in

Illinois from other states. Responses to these letters are just now being received from other states, some 28 in number, which have parole laws. In the main, these responses are in hearty accord with the suggestion that the prisoner coming into Illinois from other states be visited and looked after by the Illinois agents.

Before concluding I want to say that the Civil Administrative Code which brought into being the Department of Public Welfare, makes possible for the first time in the state's history a real co-operation between prison management and the paroling department. Without this co-operation administration of the parole law cannot be nearly so successful. The Division of Prisons and the Division of Pardons and Paroles, each a part of the Department of Public Welfare, I am glad to say are working in hearty accord and to the same end, as evidence of which the principles of prison management are recognized by the Division of Pardons and Paroles in the following classifications:

1. Proper treatment of the mentally and physically sick.
2. Classification according to needs and abilities of individual inmates.
3. A progressive merit system working toward freedom.

This progressive merit system being a thing that is entirely visible to prisoners serves to maintain discipline and promote industry, as well as to fit them for useful careers in after life and provides for their passing through the following stages while in preparation for freedom:

- (a) Confinement within prison and subjection to all the prison rules with very little personal responsibility.
- (b) Increasing opportunities to merit more confidence on the part of prison authorities by strict application to industry and adherence to prison regulations.
- (c) Positions of trust within the prison walls.
- (d) Life in cottages outside the prison walls, but under supervision of prison officials.
- (e) Work on the prison farm without guards—final preparation for parole.
- (f) Parole.
- (g) Freedom.

I began by speaking of Illinois pioneering in penal enactments. I shall conclude with a prediction that Illinois will also be the pioneer soon in an enactment which will give state-wide supervision to all probation.

SOME PRINCIPLES OF PAROLE LAWS FOR GIRLS¹

EDITH N. BURLEIGH²

Unless parole is considered in its relation to a state program for the correction of delinquency no true estimate of its value can be made.

Penology should deal with correctional systems and should recognize the various phases of treatment as parts of one whole, preserving the relations of one part to another and the interdependence of the parts.

The following paper attempts to indicate the place of parole in the care of the delinquent girl and some of its principles.

We are considering girls, who have been committed to the institution by the court, because of having broken certain laws or statutes. We are not talking about dependent or neglected children, who in certain states are being put into industrial schools. We are also assuming that the institution has been established as a training school on the cottage plan, which means a certain free life as contrasted with the stricter discipline which goes with the high walls of reformatory institutions.

It is because the girl could not adjust herself, was a misfit in the community that she was sent to the institution. Parole is the process of re-education—the specific kind of community service, through which the girl is re-absorbed into free community life.

The difference between parole and probation is that parole is dealing with a girl who has been removed entirely from the community and subject to all the influences of institution life, while probation undertakes readjustment without this experience. No girl of average mentality could pass unchanged through a period of enforced retirement in an institution, because so many new forces have been brought to bear upon her.

It is the purpose of this paper, then, to discuss by what methods parole can best accomplish its end, establishment of the girl in free community life as a helpful force.

Its conclusions are based on experience with girls only and may differ materially from the principles applicable to the parole of boys and of adults. Re-absorption into the community is governed in each instance by widely differing considerations.

¹Read at the National Conference of Social Work, Kansas City, May, 1918.

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The normal boy, for instance, has an economic value and an interest in his own economic efficiency. Such interest is secondary in importance with the girl—at least in her own mind. Earning her living presents itself to her in a form which offers none of the inducements of a career and is but a necessary tiding over of the time until she shall marry and have a home of her own—a frankly avowed ambition with a majority of these girls. This difference in mental attitude must have a great bearing in determining methods of parole and methods should be applied principles.

The fact that parole should be a part of any correctional system will undoubtedly be accepted.

It is conceded by some of the most progressive institution superintendents that parole is of importance equal to that of the institution. Their reason for this rather radical stand is that the institution, because of its restricted and practically homogeneous group cannot hope to complete the girl's training, since it can offer no practical application of the knowledge gained in her industrial training, nor test the sincerity of her change of heart and the strength of her good resolutions when the girl is called upon to face the temptations of normal community life.

The institution, then, is only the first step along the road to the complete rehabilitation of the girl.

As the unrestricted return of the girl to the community is manifestly too dangerous, both for society and for the girl, a second step must be provided for in the state program which shall include continued training and supervision. The return of the girl to the community under these conditions is made possible by a system of parole.

There are several theories as to the best system.

Most institutions have a parole officer, perhaps several officers, belonging to the staff, where possible living in the institution, and usually having some duties in the institution itself. These parole officers are under the direction of the superintendent of the institution. This system has been upheld on the ground that the girl was best known to and therefore best handled by a person living with her in the institution.

A theory more recently advocated is that parole and probation should be co-ordinated and that when the girl is paroled from the institution she should be returned to the jurisdiction of the court which committed her, as otherwise the knowledge of her gained through the investigation for the court would not be available.

The real test for any theory of parole is how effectively it can accomplish its object—the complete restoration of the girl.

A parole system established as an independent outside department, under the same board of trustees, would seem to be the most effective means of solving the problem.

While under certain conditions parole might be well done under the direction of the superintendent of the institution, separation from it insures a more complete identification of the girl with the community from the start. It marks for her the second step in her progress towards freedom.

The possibilities of parole are so great that the work needs most careful organization and the undivided attention of its officers. They should not be hampered or distracted by the problems of the institution, since their work demands a constant study of the resources in the community which can be utilized for the development of the girl on parole. This study can be made best by people who are themselves a part of the community.

Parole should offer the girl a chance to put behind her all the signs of her delinquency—court, probation, institution—the strongest argument against the co-ordination of probation and parole. This need imply no disloyalty to the institution which has done so much for her, but hitches up the girl more completely to the community from the beginning of her parole. She must not fly back to the institution as a refuge from the difficulties or the temptations she meets. She must learn how to fight them in the open with the resources which are available to her there.

This encouragement of independence of the institution does not preclude the return of girls to it when necessary for the protection of the girl and of the community. In certain instances the girls need the discipline of the institution, sometimes they need medical treatment, or further training, to make them capable of earning their living.

It is fundamentally bad for the girl to make the reformatory institution a home center. It should be a background for future attainment instead. With every desire to give the girl a sense that she has a home, tying her to the institution unwittingly helps to prevent her from making new and more normal ties in the community. I believe this would hold true also of any plan which held the girls together in a group anywhere outside the institution, such as a home from which the girls went out to work in factories or stores. Any such group, even though in a lesser degree, continues the abnormal segregation of

the institution and lessens the chances of the complete readjustment of the girl in society.

The continuance of associations formed in the institution with girls of lower standards than those acceptable to the community tends to lessen in the girl's eyes the seriousness of the offense she had committed. It is only after she comes out on parole that she can make her first application of the principles of right living taught her in the school. It is then she realizes that if she does things other people condemn she cannot hope to win their respect or to maintain her own self-respect.

The stimulating mental effect upon the girl of marking her forward progress by this separation of institution and parole is evident because it offers her a new allegiance, a new loyalty, new influences, a chance to begin all over again with new people and under entirely new conditions, where old failures need not be recalled.

As in most instances her own home does not offer the best opportunities for her development, it is usually necessary to secure for the girl a home in a family very carefully selected to fit her special needs, a home which will give her in an unusual degree oversight, protection and opportunities for further training. In every instance the girl's temperament and capacities must be considered. It would be disastrous to place a slow-moving, slow-thinking girl with a quick, red-haired woman, the discouragements of both would be too great; or again, to give a chronic runaway a place with unrestricted chance to slip away from the woman's notice.

This leads us to the conclusion that certain working principles, certain methods are essential to successful parole. These working principles interlock, but can be differentiated.

The first of these is individual treatment based on knowledge of the individual.

Each girl is an individual problem and her mental attitude as well as her capacities must be considered.

The school has been teaching her the fundamentals of good conduct, truthfulness, honesty, clean thinking, as well as giving her industrial training, supplementing her school education and laying the foundation of habits of self-control, cleanliness, order and industry.

The girl's attitude towards her parole depends upon how much hold—how much formative power—the institution has acquired over her. She may be determined to begin over again, her success depending only on her strength of will; or she may look upon parole as an opportunity to have her own way, to be free; or she may dread it as

she has grown dependent on the institution. A more or less childish attitude seems to be a frequent result of group treatment.

It is the responsibility of any parole system to comprehend and meet any of these attitudes.

No treatment of the individual can be intelligent which is not based on a thorough knowledge of that individual; her heredity, her environment, her companions, her reactions to school, her recreation, her health, her characteristics and disposition, and her delinquencies prior to her commitment. A thorough investigation of the girl's background should be made as soon as possible after commitment, in order that the institution can do its work intelligently and prepare the girl for parole. The information thus gained is also of great value when the girl comes out on parole.

A person is her potentialities (not what she is, but what she may be) plus her experiences. The girl who has had institution treatment is different from a girl who has never had it and different from what she would have been if she had never had it, because it is an added layer of experience. So it is necessary to add to what has been learned about the girl prior to her commitment, her reactions to the institution. These may be learned from reports from the various people who have come in contact with her in the school. They should cover as many sides as possible.

While it may be easier for the girl to know her visitor before she comes out on parole, there are real advantages in making a fresh start. It adds to the adventure. Such appeals to the imagination of the girl are real helps in arresting her attention and catching her interest at the beginning.

This individual treatment can only be secured by *oversight* over every girl—the second working principle.

It is through constant oversight that the girl's development is noted and her best interests insured. This oversight is secured by means of visitors, each visitor responsible for a certain number of girls who look to her for sympathy and guidance. This oversight means also the *protection* of the girl—the third working principle.

Protection includes both the girl and the community—protection of the girl from temptation by placing her in an environment which will stimulate her good impulses at the same time that it attracts and interests her. Oversight over the girl may protect her from exploitation through overwork, or neglect of her health or happiness. The protection of the girl from her bad impulses protects both the girl and the community.

The fourth working principle, *education* or *re-education* is one of the most important.

To make oversight and protection possible, the girls, when they first come from the institution need to be placed at housework. There are several reasons for this—the chief reasons are because it is only at housework that they can be constantly supervised and protected and because, having come from bad or weak homes, they need to learn the essentials of a good, happy, well-ordered home, as most of them will become home-makers themselves. There is a third reason for this placing of girls in families; a good employer, who is willing to interest herself in the further training and welfare of the girl is a powerful means of regeneration. If the girl learns to love and respect the woman she lives with and works with, she learns lessons in right living, the value of which cannot be overestimated. It may take several trials before a girl is fitted into the home best suited to influence her, but the final result is worth the most patient searching.

Return to her own home may be educative if it is made under the right circumstances. Either the home should offer special constructive influences or the girl should have developed sufficient character to grow through the responsibility of raising the standards of her home.

Ideally, constructive study of the family of the girl should be made while the girl is in the care of the state. How can new forces be set to work to build up a new family life and thus bring about a safe reuniting of girl and family?

The girl's church connections may be a great influence in her rehabilitation. While many of the girls have not developed any real religious feeling they get in the habit of forming their social contacts through the church. Some girls are honestly and deeply religious. A true spiritual awakening is always possible and is always most hopeful.

Recreation means to most of the girls before they come to the school the commercialized recreation of the "movies" and the dance halls. They know nothing of the wholesome pleasures of purely social intercourse. The good-will aroused in the give-and-take of happy family-sharing of good times, the generous impulses awakened and the quickened intellectual response resulting from social contacts of the right sort contribute largely to the growth of the girl's character.

It is usually possible to gratify a girl's ambition for lessons in music, in school branches or in various other things in which she is interested, either through private lessons or through the public schools, where under wise oversight, a girl who has failed utterly before com-

mitment because of bad influences, may be reabsorbed into the school population and become a normal happy unit of it.

The establishment of the habit of thrift is another source of education and is most important for the welfare of the girl and of the state. It is only through thrifty habits that the girl can be self-supporting when she has to stand upon her own feet after she passes out of the care of the state. The girl must be taught frugality which is the basis of prosperity—respect both for the uses and the values of things. If you can show the girl that frugality has associated with it the joy of achievement she will find real pleasure and pride in making over her dresses and retrimming her hats. The attractiveness of planning is a wedge between the girl and the temptation of pretty clothes which can otherwise be hers only through illicit means. As far as possible the girl should be self-supporting from the start. Self-support and self-respect are closely allied. A girl who feels that whatever the state does for her is no more than her due, that having been committed to the school against her will the state should support her, must be taught to realize that this is not the attitude of self-respecting people. Her growing independence may well give her a new vision of her relations to others.

The fifth working principle is closely linked to all the others and is the care of the girl's *health*. A parole system has no greater responsibility than this.

Many of these girls are physically in poor condition, if they are not diseased at the time of their commitment. They make surprising gains because of the regular life and the medical care of the institution, but the neglect some of them have previously experienced, the natural delicacy of others as well as the normal possibilities of illness make the solution of medical problems a very important part of the work of parole. The most difficult of these is that of the girls suffering from venereal disease. In spite of apparent cure after long treatment in the institution the possibility of later developments in such cases make extra care in placing and constant watchfulness a necessity. The precaution of putting these girls immediately under skilled medical supervision as soon as they are paroled protects the community and insures the continued good health of the girl.

Among the working principles of parole never to be lost sight of is the long look ahead. Good parole work implies much more than watchful care on the part of the officer. What is the girl going to be and to do after she passes out of the care of the state? From the beginning this should be borne in mind. Nothing should be done with

the girl which does not look to her future. What does she need most to hold her steadily to her purpose of being a good citizen after she has formed that purpose? She must have the constant and sympathetic encouragement of her visitor. She must be given hope and the incentive of a gratified ambition if she has one within the bounds of good sense and earning her living. The plan for her future must be her plan or she will abandon it when she is free. Even if you make a much wiser plan for her, unless you can win her honest acceptance of your plan, it must be given up for hers. The best you can do, then, is to give her a chance to test her own out before she passes out of your care. One of the lessons parole officers have to remember is that the girl has to learn from her own experience, sometimes from her own mistakes, to make her choice wisely. The learning of this lesson is worth the risk of many failures.

This long look ahead is much complicated by the variety and difficulty of the problems presented by the girls. No thoughtful prognosis of the girl's future can be made without careful observation of her mental development. Not so long ago most girls who behaved badly, who yielded to every impulse, or who were swayed this way or that by their emotions, were called feeble-minded—that happy dumping ground of the social worker. The psychiatrists and psychologists in their increasing comprehension of these problems, though they have not yet determined upon treatment, have taught us the value of careful diagnosis, and in some instances are able to advise methods of care. We at least have learned that sometimes apparently wilful conduct the girl herself is unable to control; that intellect is not always the factor which gives most trouble in the mental makeup of the individual. A girl with average intellectual capacity may have no emotional control or may be the victim of her own impulses. The most hopeful feature is that this greater comprehension, this combination of the experience of medical and social specialists may eventually be able to prove to legislative bodies, that there are certain individuals who are not feeble-minded nor insane, but who are equally dangerous to the public welfare and who must be placed in custodial care. In the present overcrowded conditions of the institutions for the feeble-minded and the lack of institutions for the care of these even more difficult girls, which include the "defective delinquent" and the more dangerous of the "psychopathic personalities," the future of these girls can be easily predicted, but not prevented.

Then there are the girls who present problems of character and disposition: the high-strung girls with bad tempers, many of whom can

learn self-control; the suggestible girls, swung either way by the people last with them; the girls with babies; the girls who steal; the girl who is unchaste; the girl with a grouch, who believes the world will only give her what she demands. And we must never forget that any one of them may be all of them.

What is the test of successful parole? The girl herself. We cannot measure success in exact terms, nor can we analyze the relative importance of the elements which compose it—the unexpected responses, the sudden awakening of unsuspected powers, the new loyalties, the development of the child into the woman. Nobody can standardize the parts of a human character, nor assemble them, but “by the grace of God” they grow, while we stand by, opportunists in character-building, ready to encourage, or to restrain, to sympathize with the joys and the sorrows, and most earnestly endeavoring to understand.

If the community would recognize its own handiwork and its own job, parole would not only be a larger part of its plan for the correction of delinquency, but would be an accepted field of study for preventive measures—measures which could be taken with little children before they become delinquents.

“For the law made nothing perfect, but the bringing in of a better hope.”

MENTAL DEFICIENCY AND THE IMPORTANCE OF ITS RECOGNITION FROM A MEDICO- LEGAL STANDPOINT

ALFRED GORDON¹

The problem of the determination of the degree of culpability of an individual who has committed an anti-social act is sometimes associated with great difficulties. A variety of factors may enter into the solution of this problem. An illegal act may be committed accidentally or unexpectedly and independently of the individual's will. It may be committed under an unavoidable necessity, such as in cases of protection of ones self or ones family. It may be committed under the influence of extreme passion or anger, when consciousness becomes blurred and cerebral inhibition is obliterated. It may be committed by insane individuals whose delusional ideas, accompanied or not by hallucinatory images, develop morbid impulses or deliberate and well planned criminal tendencies. Finally, illegal acts may be committed by individuals who, though not insane in the strict sense of the word, are nevertheless different from normal individuals by their power of reasoning, by their sentiments, tastes, sympathies, etc. To this class belongs the large category of psychopathic individuals, and also the mental defectives. The discussion of the underlying psychological moments of each of these groups of individuals is comprised in an extensive literature. We will be concerned exclusively with the medico-legal relation of the latter group alone. In order to ascertain the degree of legal responsibility of mental defectives, it is necessary first to emphasize the characteristic clinical features of mental deficiency.

In considering all varieties of deviation from normal in the psychic sphere we find a long scale beginning with mental monstrosities and ending with slight mental feebleness. When the intellectual powers are involved in their entirety we deal with idiocy. When the arrest of mental development is only incomplete and is, therefore, compatible with the existence of some intellectual manifestations, we deal with imbecility. There are also individuals in whom only certain powers are likely to reach a degree of development; in whom there is no general, but only partial defect of intellectual powers. For example, one will show a meager power of intellectual acquisition, in another the power of judgment is defective; another is incapable of acquiring ele-

¹Alienist, 1812 Spruce St., Philadelphia.

mentary mathematical knowledge, or a knowledge of the natural sciences; in another the power of attention remains very elementary; others show a marked poverty in the power of reasoning, of generalizing, of abstracting, of memorizing, of associating ideas. This category of individuals manifests a conspicuous inequality of development of various intellectual powers, so that alongside the rudimentary powers normal ones may exist. The latter however, are continuously threatened in their normal function in view of the absence of synergic functions of affected powers. Sometimes these normal powers may attain a high degree of development. We witness then a sort of hypertrophy of certain aptitudes alongside the rudimentary ones. We see for example an extraordinary memory, an extraordinary ability for calculation, for music or other special and very limited knowledge. These individuals in spite of the considerable sum of knowledge in one special direction, which is acquired in a purely mechanical way, show at the same time a remarkable poverty and a striking deficiency in association of ideas, in abstract and scientific reasoning, in generalizations. The marvelous power which they possess is exceedingly restricted and when investigated closely, will fail to demonstrate a genuine critical activity. In all of them the power of mental elaboration is decidedly diminished or totally absent. The famous French shepherd, Inaudi, could not write or read and at the same time could figure out mentally the most complicated calculations.

There is still another group of mentally defectives which is by far the largest and the most common of all types. Certain individuals without presenting a partial or incomplete mental development, such as described above, undergo a more or less slow intellectual development. Their intelligence progresses by small degrees in an imperceptible manner, so that they attain their full development at a later age than the average normal person. They acquire general knowledge with greater difficulty. Their intelligence is consequently lower than in individuals of the same age. Their development is retarded. This delay in intellectual evolution naturally varies from individual to individual. Thus we have great variations and categories of mentally retarded individuals.

From the standpoint of mental responsibility before the law, it would be superfluous to dwell at length on the idiots. The complete absence of intelligence, of moral conceptions, of sensibility, places an insurmountable obstacle between idiots and the exterior world. Education has no hold on them, impressions leave no trace in them. Instinct alone guides their actions and their relation to others. Their

life is reduced to an automatic execution of vegetative functions. It is true that in higher grades of idiocy we may observe some elements of intellectual powers; we may observe even a certain susceptibility for a physical and mental training, but all these are only rudimentary and can never acquire a more or less considerable degree of development.

In imbecility we find rudiments of intellectual and moral development. The intellectual niveau is somewhat higher than in idiots which, therefore, permits certain acquisitions. With considerable amount of patience, perseverance and ingenuity one may succeed in training imbeciles in certain moral principles. However, moral development runs usually parallel with intellectual acquisitions. In spite of all efforts one can expect but a certain degree of mental development in an imbecile. His language remains poor as to the number of words; his articulation is defective; his expressions indicate poverty of thought; the character of his acts corresponds to his manner of thinking. In the sphere of morality he exhibits instinctive tendencies of a low order. Cruelty, vanity, gluttony, masturbation, sexual perversion, excesses of all kind, cowardice, unusual irritability are all characteristic of imbeciles and these characteristics lead frequently to all sorts of abnormal acts. Theft, arson, brutality, homicide—are not uncommon in imbeciles. A very interesting feature is the extraordinary tendency to imitation. For this reason we see in them sometimes a remarkable facility of assimilating certain visual and auditory impressions and thus they imitate in a striking manner gestures and acts. This power if imitation is not infrequently utilized by the imbecile in a dangerous direction. The sight of pictures of an adventurous character accompanied by cruel and barbarous conduct produces a deep impression on an imbecile and he thus conceives the idea of imitating such acts in real life.

Imbecility like idiocy presents gradations according to the extent of mental development of the individual. Thus we consider high and low degrees and between the two extremes we find intermediate types. The transition of one of these types into another is imperceptible.

Following up the intellectual niveau one step higher than in the imbecile, we enter the domain of the large group of mental feebleness, the study of which is of considerably higher importance from a sociological and legal standpoint than of that of idiocy and imbecility. Here we meet with a great many varieties and subvarieties and the transition of one into the other is imperceptible. This is the most important chapter in the study of mental deficiency, as the number of such individuals is legion. We find them with us very frequently, we deal with

them in innumerable transactions, we find them on school benches, as well as in business life. Their relation to the community frequently results in harm.

This group of individuals presents, speaking generally, a mentality inferior to the normal in quantity and quality. Their intellectual development is both delayed and reduced. The slowness of mental evolution and its lesser amplitude are characteristic. Thus for example the intelligence of a boy of twelve resembles that of a child of five. A closer scrutiny will reveal the fact that the intellectual powers here are fundamentally different from those of a normal child, viz., they are those of a pathological constitution of the brain which distinguishes the mentally deficient quantitatively from the normal individual.

Normally an individual requires for its full development a continuous and uninterrupted chain of new acquisitions. The latter teach him how to orient himself in its relations to the community. Education therefore, in its broadest sense, by means of intelligence, plays a most important rôle. Education and intelligence are two great factors in shaping the personality of the individual. Both have an enormous influence on the development of the so-called moral personality and on the adaptation of the latter to the requirements of the social environment. Moral conscience is the ensemble of conceptions which are formed in us under the influence of two factors. First, there is a natural emotivity in every individual which renders him responsive to right and wrong or to good and bad. Second, by means of intelligence our appreciation of right and wrong becomes more correct and more perfect. Intelligence brings to the moral ego the necessary elements for its guidance. These two elements, intellectual and emotional are inseparable in a normal individual and have a certain influence on each other and thus shape our moral life. Under the directing influence of intelligence the moral personality becomes established.

If we study the interrelation between intelligence and morality in the last category of mental deficiency we find the most interesting condition. In the majority of cases the decreased power of both factors runs parallel, although symptoms of one or the other may predominate.

On the preceding pages the character of the intellectual power was sufficiently emphasized. In view of the enormous influence of intelligence upon the shaping of the moral personality, the resulting moral debility is to be expected in the category of individuals which is the subject of the present study. It is a common observation that apart from idiocy and imbecility, one of the chief characteristics of the

feeble-minded individuals is an obtuseness of conscience. The elements of the latter are too feeble in the struggle against passions. It may happen that the mentally deficient has some conception of right or wrong, he may feel that he does wrong, but he does not possess the aversion which would be characteristic of a normal individual. The moral sentiments are not powerful enough, the voice of duty is not loud enough to be overcome by impulse. The cause of this disorder lies in the incomplete development of moral ideas. The want of judgment, of will, the weakness of character render the moral personality of the feeble-minded unstable, not resistant and thus they become an easy prey of their passions.

A more detailed examination of such a moral personality reveals the following characteristic features. The majority of the symptoms referable to the deviations in the moral sphere gravitate around the ego of the mentally deficient. Thus the ego becomes extravagantly accentuated. *Egotism* consequently is one of the most conspicuous symptoms of the entire picture. It may sometimes reach an extraordinary development. The mentally deficient individuals have no other thoughts but of themselves. Nothing moves them, nothing disturbs them except their own disturbances which they immeasurably amplify. What others do has no value; only their own accomplishments are important; their own thoughts and acts are alone irreproachable. Such a psychic orientation naturally leads to a dominating attitude and intolerance. *Envy* or *jealousy* is another derivative of egotism. It spares none. It may be directed towards strangers as well as towards nearest relatives, parents included. This anomalous sentiment if intensely developed becomes not infrequently the point of departure of persecutory delusions. If others are preferred to him, the mentally deficient individual believes himself maltreated or intentionally neglected, hence a delusional idea. Jealousy creates *defiance* and *doubt*. *Anger* and *hatred* are the next consequence of jealousy. The mentally deficient may develop a hatred towards the dearest and the nearest. As egotism is the predominating characteristic, there is absence of altruistic sentiments. Such individuals are almost entirely deprived of all affection for anyone. Cruelty and brutality are the natural consequence.

Among other typical features of mentally deficient individuals may be mentioned *impulsive* phenomena. They are spontaneous and involuntary psychic manifestations. They are observed also in cases of epilepsy, alcoholism and insanity. Normally our acts are controlled by two factors—desire or an impulse for action on one hand and rea-

soning on the other. The latter controls and inhibits the former. When the intellect is impaired or defective, the impulse predominates and the desired act is executed no matter how deleterious it may be. In such cases we observe frequently sudden impulsive acts in which neither reasoning nor will power intervene. Murder, assaults, arson or any other sort of heinous crime may be committed. In some cases the mentally deficient may yet at first attempt to reflect upon his premeditated act, he may yet appreciate the immorality and criminality of an illegal act, but the appreciation and meditation are not profound enough to overcome the obnoxious instinctive tendency and the individual succumbs to the latter. In some instances we observe most extraordinary inhuman methods and procedures with which an impulsive act is committed. Morbid impulses may be manifest not only in criminal acts of a gross nature, but also in minor acts. Thefts, kleptomania, incendiarism, passion for episodic vagabondage are a very frequent occurrence in mentally deficient persons. The tendency to excesses is commonly observed in these cases. The sexual sphere is particularly involved. The impulse for sexual satisfaction is sometimes so great that it overcomes the voice of reason and terminates in a criminal act. Quite frequently sexual passion is associated with perversion and the feeble-minded individual abandons himself to unnatural acts on animals, cadavers and on himself. In the domain of sexual perversion we find a great variety of phenomena. Exhibitionism consists of an irresistible impulse to expose the genitalia. Fetichism consists in a voluptuous desire produced either by the sight or contact with certain objects, such as a female skirt, shoes, shirt, etc., or else by an odor. Sadism consists of a sexual excitement produced by inflicting injuries on others such as pinching, biting, flagellating, etc. In Masochism the individual feels a sexual satisfaction by undergoing suffering inflicted by another person. Homosexuality or sexual inversion is another perversion which consists in a sexual passion for the same sex, viz., man for man, woman for woman.

To sum up the entire picture of mental deficiency except in idiocy and imbecility we find the following fundamental characteristics. There is a profound insufficiency of moral conscience which may present all degrees. Such a status of moral conceptions enters largely into the formation of abnormal thoughts and acts, and an individual of this category falls easily under undesirable influences. The mode of feeling and reacting deviates fundamentally from physiological conditions.

On the preceding pages the essential features of mental deficiency have been briefly depicted. We have seen that the two important ele-

ments of the personality, namely the intellectual and emotional do no more preserve the parallelism of the normal individual. The intelligence being feeble it has no more inhibiting power over the moral personality. Struggle against passions does not exist or exists in a small degree. Impulsive acts are characteristic. Mentally deficient individuals possess either an emotivity with exaltation in which great impulsiveness, sudden anger, extreme anger, violence and brutality are conspicuous, or else emotivity with depression in which they exhibit extreme timidity, extreme shyness or a tendency to solitude so that the resemblance to the attitude of a savage is in some cases striking. In some cases these two conditions may alternate. In all cases morbid tendencies, such as lying, stealing, excesses in all directions are present, and perversions of all varieties, especially of a sexual nature. It is evident that the impulsive acts of the mentally deficient individuals are the expression of lack of control of ideas over passions. As the cerebral centers are the source of ideas and of their association, we observe them here in a state of collapse; they appear to be withdrawn from the chain of mental activities. The impulses are no more under the control of cerebral centers which ordinarily regulate our actions, but they exercise their influence on the motor sphere by producing an excessive activity. In such cases naturally there can be no choice of action, each movement is the immediate result of sentiment. The acts are unconscious, they *must* be executed because they are out of the field of struggle which normally exists between reasoning and passion. The acts are therefore, mechanical, automatic and of a reflex nature. Not infrequently mentally deficient individuals complain of having no recollection of certain impulsive acts. As memory consists not only of the faculty of retaining impressions but also of reconstructing former ideas and sensations, and as during an impulsive act the latter particularly suffer, it stands to reason that the above mentioned cases of amnesia deserve special attention. This opens an important chapter on the responsibility of mentally deficient individuals before the law.

In a contribution entitled, "Medical versus Legal Responsibility,"² I made mention of the generally accepted test of "right and wrong" in considering the mental responsibility of individuals who happened to commit criminal acts. I have pointed out the injustice and scientific inaccuracy in using that test. I have brought forward examples of various mental affections in which, despite a psychic disorder, the conception of right and wrong may well be preserved. A pathologic state of mentality is characterized by a more or less marked diminution or

²Journal American Medical Association, September 18, 1909.

even abolition of the power of deliberation, of will, of self-control and yet the ability of understanding that an act is morally wrong or forbidden by law may be present in its integrity. Apart from certain psychoses this view holds good in the large category of mental deficiency which we are considering now. This subject is of a very great practical importance as we deal here not with insanity or qualitative changes of mind which are acquired in adult life, but with quantitative deficiencies inherent to the individual. The idiot and the low grade imbecile cannot be expected to realize the enormity and the lawlessness of a criminal act; but when an attempt is made to apply the classical legal test to cases of milder intellectual weakness, to the large group ranging between imbecility to simple backwardness, one is bound to appreciate its inapplicability. In the description of mental deficiency given on the foregoing pages we have seen, besides a certain degree of intellectual inferiority, a certain inaptitude to acquire knowledge, to perform mental operations of a more or less complex nature, but also and particularly an inherent deficiency of inhibitory power. We have seen that the whole life of mental defectives is composed of incidents of an instinctive nature, as the instinct predominates in them and, therefore, their actions are invariably the result of impulses. These individuals may be fully aware of the illegality of a certain act, they may fully realize that murder, assault, arson, deception which they commit are morally wrong and punishable by law and yet they cannot by reason of the very nature of their mental inferiority be held totally accountable for their actions.

When an individual's conscience is not completely developed; when judgment and will power are wanting; when egotism is pathological; when envy and hatred are intense and directed towards the dearest and nearest; when impulsive tendencies are conspicuous; when a thorough appreciation of acts and meditation are intrinsically not profound enough to overcome instinctive tendencies; when all these phenomena characterize mentally deficient individuals, phenomena which constitute an integral part of their abnormal make-up—the problem of mental responsibility may be solved without special difficulty. It requires no special stretch of imagination to see that individuals mentally inferior such as depicted above possess inferior and defective conceptions of right and wrong. The discrimination between the two is naturally faulty. They may recognize the illegality of an act, viz., that punishment by law may follow, but the fundamental and social value of a lawless act is not altogether accessible to their abnormal or defective intellectual and moral personality. It is therefore evident

that their responsibility can by no means be total; it must be limited. The established legal test of right and wrong cannot be applied to these cases and if it is applied, as it is frequently done, the results are bound to be disastrous as far as the administration of justice is concerned.

Those who create laws and those who administer justice view with very few exceptions only the social side of the law and usually are not at all interested in psychologic and medical studies which present a different concept of criminality and of the criminal himself. It is true that penal legislation and legal medicine are distinct and separate sciences, but positive criminology must rely on both branches of human knowledge. An intimate unity of these two sciences is an indispensable and an essential condition of progress. Criminology has for its object the formation of positive laws concerning crimes and the discovery of remedies for them. With this object in view it searches the truth wherever it can be found and takes from medical and legal sciences data which it needs to form a scientific foundation. By the union of the two sciences the old and too narrow boundaries of human conceptions of liberty and responsibility will be broken and progress will be assured. Our present knowledge of normal and pathologic processes in the psychic sphere, the proper appreciation of abnormal mental operations enable us to avoid errors in administering justice. To accomplish the latter, responsibility and irresponsibility must be viewed from the standpoint of broader principles than heretofore. Human liberty and responsibility are two most serious elements of life that can not be dealt with in a purely technical manner. In studying a crime, it is especially essential to study the criminal and in each crime we must distinguish two factors, viz., the conditions in which it was committed and the psychic characteristics of the author of the crime. The degree of responsibility should be established in accordance with the essential features of the mental status of the criminal. That the conception of limited responsibility is gaining ground is evident from the modifications which are being introduced in the Penal Codes of several countries. Thus in Norway, Siam, Russia, Switzerland, Japan, Austria and Germany various criminological projects are being considered with the view of giving legal recognition to the idea of partial responsibility. The characteristic psychic elements of mental deficiency as described above are sufficiently conspicuous and the very nature of these characteristics which constitute an integral part of the special make-up of feeble-minded individuals demands recognition when the problem of responsibility presents itself.

THE PSYCHOPATHIC LABORATORY IN CRIMINOLOGY¹

GUY G. FERNALD²

The need for medical attendance upon prisoners has existed since the days of the earliest prisons, built of logs and later of stone or brick. As civilization advanced and primitive methods of penal administration gave way to more humane and less punitive procedure, the field of the prison physician widened, and from the limited ministrations of an emergency caller the more systematic services of well-equipped practitioners were called for and prisoners were better treated. Still later, as communities multiplied and grew, offenders increased in number and classification of prisoners demanded new kinds of prisons, especially reformatories. For some of these resident physicians have been appointed.

The appointment of a resident physician should and usually does mark the beginning of a new era in the usefulness of a prison, an era of added permanence, dignity, progress; for there is then added the undivided, specialized energy of a trained mind and presumably strong personality whose success is made or marred by his efforts in his one chosen field. Confidence in the administration is strengthened both within the walls and outside. That intangible, psychologic effect on friendly and unfriendly critic alike has been enlisted which is always made by relative completeness of equipment. With the advent of the resident physician came the earliest opportunity for an extension of medical usefulness and research beyond the limits of body hygiene into the field of mental hygiene, the field par excellence of the physician in a penal community.

A notable step taken by progressive physicians has been the recognition of the importance and necessity of treating in prisoners those remediable physical obstacles to clarity of thinking and symmetrical mental development, nasal obstructions, pus foci, infected ears, carious teeth, errors of refraction, venereal disease infections, etc. The next logical step in penal medicine is the recognition of the importance of classifying prisoners on the basis of their mentality.

¹Read at American Prison Association Congress, New Orleans, La., November, 1917.

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The daily compelling routine of the prison physician is a good and worthy work if it be well done; but at best it is indirect and contributory rather than intensively criminological; if results be measured in terms of units reformed. The doctor may win the gratitude and confidence of the prisoner whose life he saves in the operating room; but the physician's lasting satisfaction centers in the prisoner whom he has inspired to reformation in the laboratory by a direct appeal to his mentality through his reason, ambition, manhood.

The physician's duty and privilege to study and safeguard the mental integrity of his patient should be regarded as not less important nor apparent than his responsibility for their bodily health. The prison physician may convey vastly more of benefit to his charges in one hour by his advice and prescriptions of moral and intellectual calisthenics based on their mental needs as ascertained by the analysis and friendly inductive reasoning of the psychopathic interview than by ministering to them in the hospital for days.

The activities of a psychopathic laboratory and social service clinic require no extensive material foundation or elaborate equipment in the beginning. The mental equipment of the practitioner must be well trained and adequate. On this essential foundation will accumulate the laboratory records and classifications, the tangible results representing but meagerly, however, the intangible benefits to be found in the clarified thinking, studied purposes and energized achievement of the men analyzed, instructed and awakened. A psychopathic laboratory may begin modestly and prove its worth by its fruits.

The principle underlying the success and continued development of a penal psychopathic laboratory is the same as that energizing all scientific endeavors: the adaptation of known means to the accomplishment of worthy ends.

Already psychopathic clinics here and there, notably in Illinois, Massachusetts, Michigan, New York, Ohio and Pennsylvania, testify to the recognition by administrative authorities of the importance of scientific prisoner study by the physician. None of these laboratories once rightly started has been abandoned.

There are two hitherto neglected direct avenues of approach to the offender's mentality available to the medical observer: (1) by specially adapted training of prisoners in suitably constituted groups, these being determined by individual psychopathic examination for classification, and (2) by special social service appeal to the prisoner's thinking, motives, purposes based on his ascertained mental needs. The concept of the prison, house of correction or reformatory as

a place of reformation is an erroneous one, whether held by the prisoner or by those in authority over him. The ideal reformatory is in fact a good place for one who should reform, just as a preparatory school is a good place for one seeking a college training. Prisoners often vaguely feel that on release they have been or will be reformed. That is good so far as it goes, but the also often unconsidered opinion that somehow, if they are not reformed, the fault is not theirs, is a sophistry too often not corrected during incarceration. The fact is, of course, that the reformatory, or the house of correction, is their instructor, supplying only what an extraneous agency may, i. e., information, suggestion, training and inspiration. A vital mistake made by prisoners is that of relying on their good intentions as a fortification against failure. Very few inmates realize that they must proceed beyond the good intention stage to the next step, i. e., the making of a *plan* for a busy, progressive future, in which study for advancement replaces their accustomed idleness and the formation of a determination involving self-denial becomes a prerequisite to success. The period of struggle for reconstruction and reformation is outside the walls, where temptation is, and the critical day is that of release.

When a prisoner is taught these simple truths, and leaves the prison fortified with a carefully thought-out plan of how he will live and spend his time, especially his spare time, for a definite period, say, five years, while he masters a trade, then the penal institution has done its part and the offender knows it and knows what his own responsibility is. The issues are clarified. The man is prepared for his struggle and far better fortified against failure than he would be with only his good intentions. Reformation is a mental process starting within the man, not something he is to acquire from without.

Psychologically, the offender has in common with all thinking beings a strong tendency or "trend," the resultant of inheritance and accumulated experiences, which acts to keep him continuing along his accustomed course. The offender in common with all mankind must oppose or overcome or "cyphon" this trend before a change in the accustomed course of his life may occur. In the case of the offender there are, moreover, other trends which act with and accelerate or augment the above mentioned trend towards continuance along a beaten track. These trends are: the closely allied love of ease, love of adventure, wish to escape punishment and ridicule, love of approbation of the "gang" and its leader, etc. As the trends continue to act against the weaker "resistance" of early teachings, filial

regard, etc., they become more potent and amalgamate to produce a strong current of trends, the victim of which is familiar to us as the "hardened criminal."

Obviously, then, the problem of the medico-psychologist or of any social service worker who has found promising material, is to discover the mental mechanisms best adapted in each case to change the course of a mental life necessarily at a point far from the source where, perhaps, the current of trends is very strong. He may seek a "resistance" strong enough to counteract or overcome the current of trends; but this is not easily found. He may try to diminish the strength of the current of trends by "cyphoning" it and thus divide the burden, or he may attempt a combination of these methods. Mental forces must be enlisted in any case which will operate to change the thinking, purposes, and plans of a life in the direction of uplift, and these must be such and so applied as to continue to act effectively; otherwise the constant pressure of the "current of trends" will ultimately triumph.

Under the operation of the trends indicated a thief may be expected to confess only when convinced that further denial is useless. He will shamefacedly admit, when cornered, but his admission of guilt is far from being an assurance in his own subconscious self of even an intention to change his mode of life. In other words, admission of guilt is not synonymous with a "change of heart." How much less is it then an assurance of his *planning* to change his mode of life? His resistances must be so arrayed and his trends to self-indulgence be so combatted or cyphoned that he will not only intend to change his mode of living, but will plan how to accomplish this, and furthermore will consistently act for its accomplishment.

Just as it is not enough for a prisoner to intend to reform, so the medico-psychologist or any social service worker may not be content with superficially winning the acquiescence or co-operation or confession or admiration of the subject. If he would see results, he must proceed beyond the winning of the subject to the evaluation of trends and resistances, and to so select among them, and so suggest to and teach the subject, that the latter may utilize his own mental equipment and proceed with his own rehabilitation. The psychologist, and especially the medico-psychologist, may touch the most vital and the deepest hidden springs of human action; but his touch must be skillfully directed. His aim should be to teach and assist the offender to know and to use his own best or constructive "resistances" and to so select and utilize these in opposing or cyphoning his base or de-

structive trends that the former actually dominate and so redirect his mode of life.

The psychopathic laboratory not only directs thinking, and by classifying, opens the way for the economical training of prisoners; but, by individually adapted teaching fortifies the man where he is weakest. The drug and alcohol addict is taught how to meet temptation, how to avoid it; the epileptic is assisted in his selection of an occupation. The sex offender is appropriately taught, and the psychopath is shown how to recognize his peculiar weaknesses, and how to train himself to withstand or avoid temptation. These essential, personal, intimate teachings, and many others, can be made available to the needy prisoner only as they are ascertained and given him in the psychopathic clinic.

The sphere of influence of the prison physician is immensely widened as he avails himself of his laboratory opportunities. Since the blazing of a trail and foundation of a literature on the study of psychopathic conditions, the minds of administrators and of the public are open to instruction and conviction, and far less conservatism is to be encountered by any earnest, competent, medical prison man regarding the usefulness and importance of a laboratory with records than would have been encountered only a year or two or three ago.

Many a superintendent or warden is wishing his prison physician would take the initiative and show an active interest in the mental condition of his prisoners. It is not to be inferred that wardens are backward about seeking what they regard as of value to their institutions. Quite the contrary; but the fact remains that many a warden would feel the layman's delicacy involved in his suggesting to his prison physician the establishing of a psychopathic laboratory. Not one but several wardens that I recall have expressed to me spontaneously the wish that their medical officer would take a more active interest in the mental lives of his patients. The physician is logically the man to initiate the movement in any prison for a psychopathic laboratory.

The prison physician who acquaints himself with the mental condition and needs of his prisoners is in a position to be of great assistance to the Board of Parole, which should be a regularly constituted part of any penal system. His diagnoses of kind and degree of mental departure form an important part of that body of systematized and verified information presented to the Parole Board on each case as a basis for action under their rules. This work, the duty and privilege of prison physicians, the uplift of the "submerged tenth" before habit

shall have confirmed criminal tendencies, is directly in line with the greatest humanitarian, sociologic movement of our time.

Doctor, now Captain F. L. Wells of the McLean Hospital, acting as a member of a committee composed of the most eminent psychologists of the country, which has set itself the task of assembling a series of intelligence tests adapted to demonstrate the intellectual fitness or unfitness of recruits, applied their admirably contrived system of tests to fifty inmates of Massachusetts Reformatory, taking a class in the school of letters. The sum of \$5.00 was offered in three prizes for the best performances. The tests were adapted for group application and the giving required but fifty minutes' time. Spontaneous co-operation on the part of all these voluntary contestants was evident throughout. The wealth of material and manner of applying the tests excluded the possibility of coaching. Cribbing was prevented by the presence of five monitors. A result which could not be one wholly of coincidence was that the winner of the first prize was found, on the correlation of scores with institution misconduct marks, to be the holder of the highest score in that category also. In other words, the best performer with the intelligence tests was he who, judged by his disciplinary record, was the least careful of his self-control in the prison.

It would seem to be a not unfair inference from this case at least, that a measure of intelligence was not a measure of self-control, and that there is no tendency to the correlation of high intellectual efficiency with "goodness" or moral stamina; yet there may be a relationship, for this one case proves nothing. Here is suggested an enticing research problem for the laboratory worker whose material is the acting but warped minds of those of his fellow-beings for whose instruction in right thinking he is temporarily responsible. What is the relationship, if any, of character deviation and intelligence defect? There are many other problems pressing for solution.

Penal psychiatric studies and propaganda with their far-reaching results form the best and most cogent of concrete examples of what the directors and agents of the great foundations are studying to accomplish in other sociologic classes. When Mr. Rockefeller gave \$100,000,000, now without restriction, "to be used in the acquisition and dissemination of knowledge, in the prevention of suffering and in the promotion of any and all the elements of human progress," he sought in his way to further the realization of the same ideal in a wider field than inspires the psychopathic worker. It is not the wealthy man only who may

seek to realize his ideals for humanity by giving what he has to give. The prison physician may seek to realize an ideal not less worthy by giving what he has in applying his skilled energy to the emancipation of individual prisoners from the misconceptions, unworthy ambitions, mental conflicts, incipient psychoses, damaging habits, warped disposition, or inimical prejudice, etc., etc., with which they contend. The relief of individuals from these and many other remediable mental twists is peculiarly the work of the medical man. When others offer to assist in this work their efforts should be welcomed and directed and utilized in this wide and fertile field. The workers are all too few at best.

But the important consideration to be urged before this body is that the physicians in the field reach out to that which is before; that they organize and systematize their studies and efforts to include the mental welfare of patients as well as their physical needs. Is not the time ripe for this advance?

There is perhaps no more promising field for the prison physician in which to train himself for usefulness in the conservation of our nation's manhood for this and future generations than is this work of organizing a prison psychopathic laboratory. Our problem is to sift out those unworthy and uplift those worthy to be the sponsors and progenitors of American manhood.

EFFECT OF THE WAR ON THE REFORMATIVE PROBATION AND SUSPENDED SENTENCE

(Report of Committee "B" of the Institute¹)

HERBERT C. PARSONS, Chairman

"To adorn the repose of peace with its own trophies we must give renewed attention to those questions of which the civil war has increased the gravity, while it has delayed the consideration." These glowing words were written a few months before the close of the civil war in a special report made to the Massachusetts legislature by Frank B. Sanborn, long known as the "sage of Concord," then serving as the first secretary of the State Board of Charity. They form the one oratorical flight in a document devoted to a keen and forward-looking analysis of prison conditions then existing in Massachusetts, as in other states. This report has since been credited with having "presented for the first time officially in America the principles advocated by Maconchie and Crofton." It was an almost merciless dissection of the penal system of the state and, for that matter, of the country, and an exposure of the failure of the prisons to work out reformation of the criminal.

The pertinence of reference to a report of conditions as they existed in 1865 is two-fold. There is revealed a situation exactly parallel to that which the present war has brought to crime and correction. Based upon the effects of the war and looking forward to the problems which would follow upon its close, there is shown a high resolution to bring about a real advance in correctional methods. Precisely the same things resulted from the existence of the civil war as have developed during the present one, and were accounted for by theories which are familiar in now current discussion. There was a marked increase in juvenile delinquency and it was found to be due to the disturbance of home conditions, the absence of the father and elder brother, the employment of the mother in other than domestic

¹The personnel of this committee is as follows:
Herbert C. Parsons, Secy. of the Commission on Probation, Boston, Chairman.
Arthur W. Towne, Supt. Soc. for Prevention of Cruelty to Children, Brooklyn.
Wilfrid Bolster, Justice of the Municipal Court, Boston.
John W. Houston, Chief Probation Officer, Chicago.
James A. Webb, Justice of the Superior Court, New Haven.
E. Z. Hackney, Probation Officer, Court of Quarter Sessions, Philadelphia.
A. C. Backus, Justice of the Municipal Court, Milwaukee.

pursuits and the interruption of school attendance. There was an increase in the number of women offenders, both actual and, of course, tremendously more proportional. There was a marked decrease in adult male offending and a corresponding falling off in prison population, traceable, of course, to the fact that a large proportion of the male population was occupied in war. The parallel with present conditions is strikingly complete. But what is of greatest interest is that there developed a vigorous new thought in regard to correction and a determination that henceforth the prisons should not be places for the degradation and corruption of the individual, but should have a reformatory purpose or should be supplemented by institutions devoted to reformation.

In 1865 there was not an adult reformatory in America. There were one or two British examples of the engrafting of a reformatory purpose upon penal institutions, the transformation of the penal colony on Norfolk Island by Captain Maconochie being the most conspicuous. Reformatory institutions for juveniles had been established as early as 1846 and were being generally extended through the state. But there was so little sentiment in favor of a policy of rehabilitation for adult offenders that it was possible for it to be said, as it was said, that the prisons, "instead of reforming, were hardening the criminals."

The creation of the reformatory as a part of the correctional system has recently been credited to a sentiment among the people of our country against the commitment for punishment of men who had recently been serving in the army for its preservation. A search of the utterances of the prison reformers of that post-war period fails to reveal any recognition on their part of such a motive. But it is quite possible that it had to do with the changed policy which found reflection in the disposition of cases by the courts and in the provision by the state of reformatory prisons. The civil war unloosed, precisely as the present war is expected to do, great impulses toward human betterment. Is it unreasonable to credit the demand of that period for a humane and helpful correctional policy to the tremendously stimulated desire to better human conditions? Whether so or not, the fact stands out that the reformatory as an adjunct, and a valuable one, to the correctional system of our country had its birth in the period immediately following the war for the preservation of the union.

In 1918, with our country engaged in another great war and with the identical symptoms as to its effect upon corrections, what forward steps are indicated in our treatment of offenders? You may be sure there will be no less reluctance to penalize men who have been

engaged in the great conflict when, as must unavoidably happen, they appear in the criminal court. Moreover, the impulse to democracy which is counted upon as the transcendent fruition of the present great conflict cannot and should not miss its application in this field. Its processes must be democratized. The rule, which is to give to every human life its fullest and freest opportunity for development, will not be withheld from those who by mischance or error offend against the laws. The answer to the protest of the older reconstruction period against the penal institution was: another institution—a very different institution, having in view the rehabilitation of men, but still an institution. Z. R. Brockway, then of Detroit, speaking to the National congress at Cincinnati, October 12, 1870, declared that “legalized degradation or destruction of any class or any criminal inflicts injury upon the whole social organism.” That was the advanced sentiment of the period. But Mr. Brockway’s method of meeting it was what he called “the graduated series of reformatory institutions for adults.” It was the answer of the times, expressed in the subsequent years in tremendous expansion of institutions of every order. It is not the answer of 1918 to a similar situation and a corresponding impulse.

In the field of corrections, as in the field of medical care, or in that of treatment of the mentally disordered, the new development is outpatient care—the holding of the subject of treatment to the nearest possible normal relationship to his fellow men and his care under supervision, rather than in confinement. That this is true in corrections is amply established by the fact that practically every state in the union has written into its criminal law some recognition of the principle of probation. The impatience at confinement of a normal human being in a penal institution, which compelled the building of the reformatory, will not less powerfully express itself in protest against this confinement in an institution of any sort. In view of this clearly indicated situation, it is time to ask how far the states have provided themselves with a mechanism for meeting it. The answer is that not one of them has adequately equipped itself, while most of them still impose limitations and restrictions which the new demand will glaringly expose as effectually blocking the fulfillment of a humane and sensible plan.

It took a few years for the state to provide the reformatory institution which was to meet the demand of sixty years ago. New York built Elmira in 1869. It was not until 1884 that Massachusetts provided a reformatory for men. The development in the other states has gradually followed until none of them counts its correctional outfit without this sort of an institution. It may yet require years to accom-

plish the full equipment of its outdoor reformatory, even though an intelligent and alert public opinion already points to it as an essential under every humane government.

Statistical information as to the growth in the use of probation is difficult to obtain for the reason that few states maintain a department for its oversight or even a bureau for the collection of the facts. It is hardly needed, however, to establish the main fact, namely that the courts are rapidly increasing their use of this instrument and that such use is being amply justified by the favorable reactions on the part of those who are its direct beneficiaries. What is timely is the development of guiding principles in the legislation of the states, based upon the experience of those which have given the process of rehabilitation without confinement its fullest test.

In the report of this Committee to the Institute at its annual meeting of last year, a study was offered of the statutes of the various states, with a showing of their wide variations and particularly of the cautious limitations quite general among them. The legislation of the year has but slightly changed the situation and has brought us very little nearer to the realization of a well equipped system, even though it has unquestionably shown a much increased use of such equipment as is provided. The need will presently be realized to an extent that it does not yet seem to be for a uniform probation law applicable to adults as freely as to juveniles. Institutional reformation began with the children and waited years for the inclusion of adults in its obvious benefits. Outdoor reformation has been going through the same halting advance and yet awaits recognition in well toward half the states. If our prognosis as to public sentiment in relation to corrections immediately following the war is correct, it will not wait much longer.

The positive essentials of a probation law are few. The first is the presence in every court-room where men are tried for offenses of any order of an officer who shall present to the court all the social facts as to the offender for its guidance in proper treatment of his case and shall stand ready to receive into his care for helpful supervision the person found guilty of offense. Mr. Brockway in 1870 included in his reformatory scheme a "house of reception" where "all prisoners shall be received and retained until reliable information is obtained as to their ancestral history, constitutional tendencies and propensities" and "a careful estimate made of their physical, mental and moral condition . . . upon which bases a plan of treatment may be outlined." Our newest thought has not advanced beyond such a requisite, but it has moved the place for the inquiry back from the

institution to the court-room, to the end that such diagnosis shall be made available for the court, which is no longer to be held to a blind and uninformed disposition of its problem.

The other main essential is that all the discriminations among those who may be considered for its benefits be abolished. The limitation as to age would be the first to disappear. Next after it would follow the distinction as to the nature of the offense. The confinement of candidacy to the first offender rests upon a totally fictitious notion that the first appearance in court is essentially innocent and that subsequent appearances are essentially criminal. The restriction as to offense, according to its seriousness or the penalty attaching to it, is another gross denial of the rule that the court is dealing with the doer of the deed rather than with the deed that he has done. The bar which prohibits the helpful dealing with a person who may have been at some time in his career confined in a penal institution is equally forgetful of the possibility of response to helpfulness even in one who has failed to improve under punishment.

Not to repeat in detail the recommendations for a standard prohibition law which were made in the report of this committee a year ago, reference may be made to them with added emphasis as to the need of the states providing the courts with the adequate machinery for probationary dealing with offenders. The one exception to be made to the recommendations then offered is as to the control of the probation service by the court, both as to appointment and compensation; and this is excepted out of deference to the view of some of your committee that this may be safely regarded as an administrative rather than a judicial function. It matters much less how probation officers be appointed than that they be appointed, and that they be appointed in every court in order that to no man, woman or child shall be denied the possible benefits of friendly but thorough supervision in the community.

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER AND WILLIAM G. HALE

CONTEMPT.

Toledo Newspaper Co. v. U. S., 38 Sup. Ct. Repr. 560. *Obstruction of Justice by Newspaper.*

Judicial Code (Act March 3, 1911, c. 231), Sec. 268, 36 Stat. 1163 (Comp. St. 1916, Sec. 1245), first enacted as Act March 2, 1831, c. 99, 4 Stat. 487, which declares that courts shall have the power to punish contempts of their authority, provided that such power shall not be construed to extend to any cases, except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, confers no power not already granted, and imposes no limitations not already existing, but merely marks the boundaries of existing authority and, conformably to the whole history of the country, recognized and sanctioned the existence of the power of federal courts to restrain acts tending to obstruct and prevent the untrammelled and unprejudiced exercise of the judicial power; so the publication of newspaper articles which tend to obstruct the administration of justice may be treated as a "contempt."

Newspaper articles, referring to a suit in the federal court to enjoin municipal ordinances regulating street car fares, which held the federal judge up to ridicule and hatred in case he should grant an injunction, and in advance impeached his motives in so doing, and practically urged non-compliance with any such order, must be deemed acts tending to obstruct the administration of justice, within Judicial Code, Sec. 268, and punishment for contempt cannot be avoided on the ground that it did not appear the judge saw the articles or that he was unaffected by them.

Mr. Justice Holmes and Mr. Justice Brandeis dissenting.

CONSTITUTIONAL LAW.

State v. Cook, W. Va. 95 S. E. 792. *Equal protection of the laws: excluding persons of African descent from jury.*

Whenever by any action of a state, whether through its Legislature, through its courts, or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand or petit jurors in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him contrary to the Fourteenth Amendment to the Constitution of the United States.

The fact that there were no persons of African descent upon the grand jury such indictment, or upon the petit jury summoned for the purpose of trying the defendant, does not of itself show the exclusion of such persons solely because of race or color.

CORPORATIONS.

State v. Lehigh Valley R. Co., N. J. 103 Atl. 685. *Criminal liability of corporation for manslaughter.*

A corporation aggregate may be held criminally for manslaughter.

An indictment in the statutory form charging a corporation aggregate with manslaughter will not be quashed for failure to specify whether voluntary or involuntary manslaughter is meant.

EMBEZZLEMENT.

U. S. v. Wertzel, 38 Sup. Ct. Repr. 381. "*Agent.*"

A receiver of a national bank appointed by the Comptroller of the Currency under Rev. St. Sec. 5234 (Comp. St. 1916, Sec. 9821), being an officer of the United States instead of the bank, is not an agent of the bank within section 5209 (Comp. St. 1916, Sec. 9772), denouncing the offense of embezzlement and making false entries by every president, director, cashier, teller, clerk, or agent of a national bank; the conclusion being strengthened by the principle of *noscitur a sociis*, in view of the position of the word "agent" in the section.

Statutes creating and defining crimes are not extended by intendment because the court thinks the Legislature should have made them more comprehensive. Therefore Rev. St. Sec. 5209, denouncing the offense of embezzlement or making false entries by a president, director, cashier, teller, clerk, or agent of a national bank, cannot by implication be extended so as to embrace receivers appointed by the Comptroller of the Currency, on the ground that otherwise there would be no statute applying to embezzlement by such receivers.

EVIDENCE.

State v. Gilligan, Conn. 103 Atl. 649. *Proof of intent to poison by proof of other crimes.*

Where accused keeper of house for old people secretly borrowed money from an inmate who was poisoned, and proof of other killings by accused of inmates by poison were inadmissible, evidence of financial transactions and purchases of poison connected only with such other killings was also inadmissible.

Roraback and Wheeler, JJ., dissenting from reasoning of opinion.

EXTRADITION.

Taft v. Lord, Conn. 103 Atl. 644. "*Fugitive from Justice.*"

Where a husband and father, who had married in New York state, resided there with his wife, and had children born to him, left the state to go to Connecticut to find work, giving his wife money for her and the children's maintenance until he could send them more or bring them to Connecticut, and after he found work in Connecticut sent on for his wife and children and established them in his home in Connecticut, which they later left, returning to New York on account of a quarrel, after which the husband sent the wife no money for her support or the support of the children, such husband was not a "fugitive from justice" from New York to Connecticut within Const. U. S., Art. 4, Sec. 2, justifying his arrest by the executive authority of Connecticut for rendition to New York on its demand on indictment for abandonment, since no one can be considered a fugitive from justice and extraditable as such who has not either committed some crime in the demanding state or done therein some overt act intended to be a

material step in the accomplishment of a crime subsequently consummated somewhere.

To constitute one a "fugitive from justice" within Const. U. S., Art. 4, Sec. 2, as to the rendition of such fugitives between states, the person, having been in the one state, must have left it and come within the jurisdiction of the other state, and must have incurred guilt before he left the one state and while bodily present in it, and one who is without the jurisdiction of the one state when he is wanted there to answer a criminal charge does not, by his absence alone, become a fugitive from justice nor does he from the mere fact that he has rendered himself liable to criminal prosecution in that state.

INDETERMINATE SENTENCE.

People v. Lee, Calif. 172 Pac. 158. *California statute construed.*

Under Pen. Code, Sec. 1168, added by St. 1917, p. 665, providing for indeterminate sentence, not greater than maximum nor less than minimum of the term fixed for the particular offense, a sentence of one convicted of manslaughter to from one to ten years' imprisonment is erroneous in view of section 193, fixing a maximum imprisonment for manslaughter of ten years, but fixing no minimum term.

People v. Hall, Calif. 172 Pac. 1116. *Effect of error in applying indeterminate sentence law.*

Where an offense was committed before the indeterminate sentence law took effect, an indeterminate sentence cannot be given.

A conviction will not be reversed for error in giving an indeterminate sentence for an offense committed before the indeterminate sentence law went into effect, but the case will be remanded, with instructions to give a proper sentence.

INDICTMENT.

Knight v. State, Ga. 95 S. E. 679. *Specifying means used in homicide.*

Where an indictment alleged that the accused killed a woman by shooting her with "a certain pistol and with a certain rifle," it was not error to overrule a demurrer based on the ground that the homicide was charged as committed with two different instruments, alleged conjunctively, that it is physically impossible to kill a person with a gun and a pistol at the same time, and that one of them alone must have produced the death. *Walker v. State*, 141 Ga. 525, 81 S. E. 442, and authorities cited.

State v. Rubin, N. J. 103 Atl. 390. *Description of stolen goods: indefiniteness.*

An indictment for stealing, or receiving, knowing it to have been stolen, 125 pounds of brass, is not bad for indefiniteness, because not specifying nature and form of the brass; the assumption that brass cannot exist in an unmanufactured state, or at least without having been given some specific form, being untenable.

INSANITY.

Polk x. State, Ga. 95 S. E. 988. *Burden of proof.*

Exception is taken to the following charge to the jury: "The law presumes every man sane until it is made to appear, to the contrary, that he is insane or of unsound mind. And if a man files that plea, the burden is on

him to make it appear to the satisfaction of the jury: it ought to be made to appear to a reasonable certainty that at the time of the commission of the act, if any, he did not know the nature and quality of the act, or, if he did know, he did not know the act was wrong." The error assigned is that the charge placed upon the defendant a greater burden than the law requires; "the court put upon the defendant the burden to make it appear to a reasonable certainty that the accused was insane, when the true rule is merely that the defendant must show insanity by the preponderance of evidence." The homicide was admitted. The sole defense was insanity at the time of the commission of the homicide. The defendant offered no evidence whatever; he relied upon his statement alone. The court charged the jury as follows: "If after a full, fair, and honest examination of this evidence in connection with the defendant's statement, your minds are unsettled, unsatisfied, do not know what the truth about it is, then that is what is called a reasonable doubt in law, and you should give him the benefit of that reasonable doubt and acquit him." Held, that the criticism of the instruction excepted to is well taken; but under the facts of the case, and in view of the subsequent charge last quoted, and the whole charge, the error pointed out is not such as to require a reversal.

INSTRUCTIONS.

State v. Worley, W. Va. 96 S. E. 56. *Reasonable doubt.*

An instruction, attempting to define the term "reasonable doubt," and concluding with these words addressed to the jury, "if you doubt as men you should doubt as jurors; if you do not doubt as men you should not doubt as jurors"—should be refused.

INTOXICATING LIQUORS.

State v. One Packard Automobile, Okla. 172 Pac. 66. *Seizure and forfeiture of automobile under statute: "appurtenance."*

An automobile used April 27, 1916, in the unlawful conveyance of intoxicating liquor in the presence of an officer having power to serve criminal process, was not subject to seizure by such official and forfeiture to the state under the provision of section 3617, Rev. Laws 1910, and is not an "appurtenance" within the meaning of that section, which provided: "When a violation of any provision of this chapter (chapter 39, Intoxicating Liquors) shall occur in the presence of any sheriff, constable, marshal, or other officer having power to serve criminal process, it shall be the duty of such officer, without warrant, to arrest the offender and seize the liquor, bars, furniture, fixtures, vessels and appurtenances thereunto belonging so unlawfully used."

Brett, J., dissenting.

OBSCENITY.

State v. Payne, Okla. 172 Pac. 1096.

Under section 2403, Rev. Laws 1910, making it a misdemeanor to "utter or speak and obscene . . . or lascivious language or word in any public place, or in the presence of females, or in the presence of children under ten years of age," the language used need not necessarily consist of words obscene or lascivious per se, but where the information sets out the language, although it may be composed of words which are not in themselves either obscene or

lascivious, yet if the sense and meaning of the words employed is either obscene or lascivious, the information is sufficient to state the offense, where all other allegations necessary to complete said offense are contained therein.

PROSTITUTION.

State v. Kelly, Wash. 172 Pac. 1175. *Statutory construction: "every person."*

"Every person" as used in Rem. Code, 1915, Sec. 2440, providing that "every person" who shall live with or accept any earnings of a common prostitute, etc., shall be punished, etc., includes females as well as males.

STATUTE OF LIMITATIONS.

Pitts v. State, Ga. 95 S. E. 935. *When statute begins to run in bigamy case.*

It is marrying, or going through the form of marriage, which the law has enjoined as requisite to the creation of the marital relation, by a person who has a husband or wife living, with knowledge of such fact, that constitutes the offense of bigamy under our statute; and the offense is completed upon the second marriage. Subsequent cohabitation is not a necessary element in the offense; nor will subsequent cohabitation render it a continuing offense, so as to fix the time of cessation of the cohabitation as the point from which the statute of limitations will begin to run.

TRIAL.

People v. Webster, Calif. 172 Pac. 768. *Conduct of counsel.*

There can be no excuse for flagrantly improper conduct of assistant district attorney, in referring to prior conviction for similar offense after the court had stricken out all reference thereto, and in saying what he would do, had prosecutrix in rape case been his daughter.

But such error was harmless, where the record of defendant's guilt was very clear and convincing.

WITNESSES.

McWhorter v. State, Ga. 95 S. E. 1013. *Judicial endorsement.*

Upon the trial of this case several police officers testified for the state, and none for the defendant. The defendant's conviction was not demanded by the evidence. Under these facts it was error, requiring the grant of a new trial, for the court to charge the jury as follows: "But the fact that a man is an officer is nothing against him. *We rely upon these officers.*" This is true, even though in immediate connection with this charge the judge tells the jury: "I charge you, the fact that a man is a detective or police officer should not discredit his testimony. It goes to his credit that he is actively engaged in the prosecution of the case, . . . and the fact that they (the detectives and police officers) receive money from people for recovering their property which has been stolen is a fact which you may consider. If they get money in any case for the purpose of securing a conviction, or if a conviction depends on their evidence, it should go to their credit, and largely to their credit." For the presiding judge in his charge to designate a class of witnesses, and to tell the jury, "We rely upon" them, is to give to these officer witnesses "judicial indorsement and approval," and "to give an improper potency to the influence" of their testimony. Civil Code, 1910, Sec. 4863; *Potter v. State*, 117 Ga. 693, 695, 696, 698, 45 S. E. 37; *Alexander v. State*, 114 Ga. 266 (2), 267, 268, 40 S. E. 231; *Pound v. State*, 43 Ga. 88, 90 (7).

INNOCENT AND ARRESTED BY MISTAKE—CAN THE RECORD BE DESTROYED?

That an innocent person, arrested through mistake, has no right to have the record of the arrest made by the police under statutory authority cancelled or destroyed is held in the Michigan case of *Miller v. Gillespie*, 163 N. W. 22, L. R. A., 1917, E., 774.

This case seems to be the first to have directly passed upon the question of the right of one who has been arrested to have the record of such arrest as made and retained for possible future reference by the police surrendered for cancellation. However, the denial of a right to have such record destroyed is in keeping with the weight of authority upon the closely allied question of the right to take and retain in a rogue's gallery the picture of one accused of crime before conviction.—JOSEPH MATTHEW SULLIVAN, Boston, Mass.

REFORMATORIES NOT PENAL INSTITUTIONS.

Webb, U. S.: Attorney General, State of California. Opinion as to whether state reformatories may be classed as penal institutions with reference to compliance with provisions of Section 6, Chapter 723, Statutes of 1917. This chapter creates a State Bureau of Criminal Identification, repealing an earlier act covering the same subject matter. By Section 6 of the act it is provided that the board of managers of said bureau shall keep on file a record of all measurements, photographs and descriptions of persons confined in state penal institutions. That there was intended to exist a distinction between a penal institution and a reformatory is in part ascertainable from the language of Section 2, Article X, Constitution of California, referring to the powers of the State Board of Prison Directors. The latter are given the charge of the state prisons and to them are delegated such powers "in respect to other penal and reformatory institutions of the state" as prescribed by the legislature. The general law on the subject of state prisons is found in Title I, Part III, of the Penal Code, and designates the two prisons as San Quentin and Folsom. The acts establishing the Preston School of Industry, Statutes of 1889, page 100, and the Whittier State School, Statutes of 1889, amended by Statutes of 1893, page 238, are shown to be for the purpose of providing schools for the discipline, education and employment of juvenile delinquents. The theory of the Juvenile Law, enacted by Statutes of 1915, page 1225, is to separate juvenile and adult offenders. The two schools come within the meaning of Section 24 of said act as desirable places to which such children may be sent. It was held in the case of *Ex Parte Ah Peen*, 51 Cal. 280, that the committing of a minor to the industrial school department of San Francisco did not amount to a criminal prosecution, but that it was intended to train the child so that his future might be useful when reclaimed to society. In the case of *Ex Parte Liddell*, 93 Cal. 633, the law creating the Whittier State School was held constitutional. It was therein decided (1) the legislature has power to provide for the detention and education of juvenile offenders, and (2) that the object of the act is not punishment, but reform, discipline and education. It observed that the conditions surrounding a child are vastly different than if sent to a state prison or county jail. It was pointed out "He is given the opportunity and instruction to learn a trade and qualify himself for the duties of citizenship." The court differentiated between being in a state prison and in a reform school and pointed out that if boys are "honorably discharged are released from all penalties and disabilities resulting from the offenses or crimes for

which they are committed." The exact language contained in these lines of reasoning was employed with approval in the case of *Ex Parte Nichols*, 110 Cal. 651, which held as constitutional the act establishing Preston School of Industry. Definitions of the words "penal" and "reformatory" as laid down by standard legal authority and cited in the opinion "indicate that the law recognizes a distinction between a 'penal institution' and a 'reformatory.'" In all legislation affecting this bureau nothing is included requiring such information to be furnished by the superintendents of the reform schools, but the Statutes of 1909, page 398 (and now in force) direct that the wardens of the state prisons shall send "*to the legalized Bureau of Identification*" such information. The opinion concludes with the following statements: "Therefore the said prisons being named and the reformatories not referred to, we see an additional reason for believing that there was no intention to require the reformatories to furnish these records to your bureau (State Bureau of Criminal Identification and Investigation). Therefore the Whittier and Preston reformatories are not to be classed as penal institutions, and as being required to comply with this provision."

The foregoing opinion was given in a letter addressed to me by Attorney General U. S. Webb, under date of February 28, 1918.—FRED C. NELLES, Superintendent Whittier State School.

NOTES AND ABSTRACTS

Beginnings of a Psychopathic Laboratory in the Criminal Courts of Baltimore.—In 1915, while a member of the house staff of the Phipps Psychiatric Clinic of the Johns Hopkins Hospital, I had a dispensary case which brought me into touch with one of the city police courts. Nothing was known there of modern psychiatric methods, but the presiding magistrate happened to be a very broad-minded man, anxious to make use of anything that would help him to solve the problems brought before him. So, whenever I had a free hour from the clinic, I devoted it to getting a thorough knowledge of this one police court, and to showing the magistrate as well as the police exactly what psychiatry and medical jurisprudence had to offer them. Gradually my work was extended to other police courts. Later to the highest tribunals, the two Criminal Courts of the Supreme Bench. Here I found a very staunch friend and supporter in Judge Gorter. For two years I have been devoting almost all my mornings to these two courts, examining delinquents for mental deficiency, making reports on questions of medical jurisprudence and criminology, both for the judges as well as for the district attorney's office. By this time (1918) I was on the visiting staff of the Phipps Clinic, with my own private practice, so that I was free to dispose of more of my time. In January, 1918, a bill was introduced into the Maryland legislature appropriating \$5,000 yearly for a medical service at the Criminal Courts. This bill passed the House, but was killed in the Senate.

Finally, in June, 1918, the Supreme Bench decided to create the position of medical adviser, with the salary of a bailiff, which they had the power to do without consulting the legislature. I was appointed on June 26th.

This, we hope, is only the first step in the direction of a laboratory, which shall be, not only for the study of psychopathic questions, but also for problems of current criminology and of medical jurisprudence. The mayor of Baltimore, Mr. Preston, has always been very sympathetic when I have spoken to him of my hopes, and there is a possibility that, with his aid, we may next year secure from the City Board of Estimates the necessary appropriation.

During the coming year I intend to spend some weeks visiting those cities which have psychopathic laboratories, so that I may get the benefit of their experience.—JOHN R. OLIVER, Supreme Court, Baltimore.

The following from the *Baltimore Star*, June 26, 1918, relates to Dr. Oliver's activities in the court:

"Judge Gorter today announced that the Supreme Bench, realizing the pressing need of a proper medical examination into criminal cases in the local courts, has appointed Dr. John R. Oliver, an alienist of the Johns Hopkins Hospital, as the medical court officer for this purpose.

"Dr. Oliver has given his services to the Criminal Courts for the last two years without any compensation whatever, and he will now receive as court officer a modest salary. He is one of the best-trained nerve specialists and psychologists of this country and has had a wide acquaintance with mental diseases in relation to crime both in America and abroad. He was on the Phipps house staff for two years and has for some time been on the visiting

staff of the institution. Judge Gorter says he has found Dr. Oliver's services in the Criminal Courts invaluable."

COURTS—LAW

Report of the Vagrancy Court in Chicago.—(Criminal Branch No. 1, Municipal Court of Chicago.)—*Report of Activities from January 29, 1918, to June 24, 1918.*—(Reprinted from the Journal of the Proceedings of the City Council, City of Chicago, for June 28, 1918, pages 543-7.)—"The power of the legislature to define vagrancy is beyond a doubt. Section 270, Chapter 38, Revised Illinois Statutes, has extended the common law vagrant to include juggling or other unlawful games or plays, runaways, pilferers, confidence men, common drunkards, night walkers, lascivious persons, common railers and brawlers, persons who habitually mis-spend their time by frequenting houses of ill-fame, gaming houses or tippling shops, and "all persons who are known to be thieves, burglars, or pickpockets, either by their own confession or otherwise or by having been convicted of larceny, burglary, or other crime against the laws of the State, punishable, etc., and having no lawful means of support, are habitually found prowling around any" (enumerating many public places) "shall be deemed to be and they are declared to be vagabonds." The penalty clause provides a sentence in the House of Correction or County Jail of not less than ten days and not exceeding six months, or the imposition of a fine of not less than \$20 nor more than \$100 and costs of suit.

"The first cases in the so-called Vagrancy Branch of the Court were heard January 29, 1918, and practically all the cases tried since that date, with the exception of the cases of women, have been charged under that portion of the Statute commencing 'All persons who are known to be thieves,' etc., probably 95 per cent of the cases of men have been charged with the offense of vagrancy in an information charging that the defendant 'was an idle and dissolute person and was habitually neglectful of his employment and calling and did not lawfully provide for himself and neglected all lawful business and did habitually mis-spend his time without giving a good account of himself and is known to be a thief having no lawful means of support and is habitually found prowling in and loitering around thoroughfares and tippling shops, in violation of Section 270, Chapter 38, of the Revised Statutes of the State of Illinois.'

"In this large array of cases it is apparent that there has been in Chicago a criminal class, properly designated as 'thieves,' a class without a permanent fixed residence, who may be found generally in company with other well-known thieves at any hour of the day or night at any one of a thousand places, prowling or loitering, without any visible means of support or honest employment.

"The general term 'thief' embraces a variety of activities: burglary, hold-up, robbery, larceny, safe blower, confidence men, shoplifter, pickpocket, wagon thieves, jackrollers, purse-snatchers, and petty pilferers. These all have had their day in court, charged as vagabonds.

"There have been rare instances where the proof of thieving was limited to a single offense or conviction. Ordinarily, the record shows anywhere from three or four offenses to fifteen or twenty, and the record further shows the individual's activities are not limited to any one city. To me it is a compliment

to the intelligence of the detective sergeant or police officer of Chicago, or any city, that they are able intuitively to gather from the crowd the pickpocket or thief, verifying later by the Bertillon system that they made no mistake. . . .

"An interesting group in February disclosed that A had served a term in the House of Correction for larceny and a term in Joliet for burglary. B had served two terms in the House of Correction for larceny. C had served a sentence in Minnesota for vagrancy, and two terms in the House of Correction for larceny. D had served a term in Wisconsin for vagrancy, also a sentence for disorderly conduct, also a sentence in Stillwater Penitentiary for picking pockets, and a term in House of Correction for disorderly conduct, and E, House of Correction for con game, and five years in Federal prison, Fort Leavenworth, Kansas, for postoffice robbing. Not one of these men had any employment or means of support.

"On the vagrancy charges A was sentenced to 6 months in House of Correction; B, 6 months; C, 4 months; D, 6 months, and E, 30 days. A sixth individual, with no criminal record, was sentenced to 6 months, and an individual escaped at time of arrest. . . .

"Aside from the criminal class there was presented to the Court an example of the family with a criminal tendency. Two brothers of the M. family were both before the Court as vagrants, and each was sentenced to six months. The record of J. M. showed:

Pontiac, robbery;
Eight months County Jail, burglary;
One year House of Correction, fornication;
Six months, House of Correction, burglary;
Six months House of Correction, driving horse away;
Six months House of Correction, burglary;
Twenty days House of Correction, larceny;
One year Green Bay (Wis.) Reformatory, burglary.

His brother, F. M.—

Pontiac, larceny;
Pontiac, burglary;
Fifty dollars and costs, disorderly conduct;
Returned to Pontiac;
Reparoled;
Returned to Pontiac;
Reparoled on account of death of mother;
Returned, violation of parole;
Eight months House of Correction, burglary;
Joliet, burglary.

"Another brother has an equally stormy career, and served a sentence in Joliet for burglary. Another brother was never convicted of any offense. The father killed this brother over a quarrel when the boy brought to the home a woman of ill-repute. The father was acquitted on the ground of self-defense in the Criminal Court of Cook County.

"The several instances of criminal records just cited indicate a fair average of several hundred of such cases before the Court since January 29, 1918.

"Only one woman was charged as a well-known thief. N. K. had many aliases, as is usually the case. She was a pickpocket and the wife of a well-known pickpocket. They were brought in about six weeks apart. Both are

now in the House of Correction. N. K. has served two years in Joliet, six months Erie County Penitentiary, N. Y.; six months Female Reformatory, Toronto; four years Jefferson City (Mo.) Penitentiary; three years Stillwater (Minn.) Penitentiary; also ninety days House of Correction, Milwaukee, vagrancy; one year House of Correction, Chicago, larceny, besides innumerable arrests in other cities throughout the country. She frankly informed the Court that at one time she had a trained corps of 'operators' (pickpockets) under her charge.

Results

"After the arrest, offenders were very unwilling to promise to get work. They were tried, however, on the record at time of arrest, and not on promises. The Vagrancy Court anticipated the Government order to work or fight. Men were not released on promises to work; that would be too simple a defense. The Court refused to bring back offenders from the House of Correction on the promise of employment. Some few were brought back when actually called in the selective draft. Twenty-five or thirty went into the military service, and we had positive information that the individual was actually in the service before the order of discharge was entered. Two enlisted in the navy.

"In all the cases tried we found only one case on parole from an Illinois penal institution. A boy paroled from Pontiac, charged with vagrancy, was sent back to Pontiac for violating parole by Parole Officer Reed after the Court had indicated that he would send the boy to the House of Correction. Parole officers inform me that after the establishment of this branch every paroled man and boy 'was on his good behavior, refused to associate with thieves, stayed away from pool rooms and saloons, and would not come into the loop for a thousand dollars.'

"There has been no instance of any one charged with vagrancy who was on probation by judges of this court. At least three cases came to the attention of the Court on probation from the Criminal Court. It was not the fact that they were on probation that attracted attention, but the fact that they had long criminal records and their records clearly placed them beyond the pale of the adult probation law.

"On February 13, 1917, J. O. was placed on probation for one year in the Criminal Court. Previously he had served fifteen days, County Jail, larceny; seven days, County Jail, receiving stolen property; six months, County Jail, enticing females, and six months, House of Correction, larceny.

"J. D. was placed on probation March 8, 1917, for one year in the Criminal Court. He had been charged in the Criminal Court previously with burglary and assault to rob, and in Indiana had served a sentence of six months in the State Farm on the charge of robbery and assault to kill.

"W. P. was placed on probation October 5, 1917, for one year in the Criminal Court of Cook County. A charge of burglary had been dismissed and he had served ninety days for malicious mischief in the House of Correction; fined \$25 and costs for disorderly conduct; one year in Pontiac and fined \$100 and costs; discharged on two other occasions on charges of larceny; had been in John Worth School. These three cases were arrested within the probation period. Not one made a pretense of having work.

"The Court has been very careful on the matter of bonds for this class of offenders. There has been a total of twelve bond forfeitures, two of which

were women. Stay bonds have been filed in these cases and supersedeas issued. That means three appeals perfected to the Appellate Court, out of the entire number of cases disposed of.

"There were four changes of venue granted. There have not been to exceed twenty cases where the offender was under twenty-one years of age. Seventeen cases were transferred to the Boys' Court. In the Boys' Court there was one bond forfeiture. Eleven were discharged; three were sentenced to three months in the House of Correction, and one, two months.

"When the vagrancy branch was opened, Chicago was overrun with crime. The Aldermanic Crime Committee had become active; business interests and citizens generally demanded some action on the part of the constituted authorities.

"From the Chicago police records, or, as it is generally termed, from the 'squeal books' of the police department of the entire city, figures have been gleaned that are most convincing as to results. These records show the crimes committed and brought to the attention of the police department. Under the general heading of burglary, robbery, and larceny, the following results are learned:

	Burglary.	Robbery.	Larceny.	Total
October, 1917	349	146	654	1,149
November, 1917	422	245	621	1,288
December, 1917	357	249	537	1,143
January, 1918	258	280	436	974
February, 1918	273	143	334	750
March, 1918	327	101	424	852
April, 1918	293	90	393	776
May, 1918	266	61	474	801

"So that it may appear that approaching summer has not caused the diminution of crime, there is here presented the police record for the same offenses for the months of January to May, inclusive, 1917:

	Burglary.	Robbery.	Larceny.	Total
January, 1917	624	248	674	1,540
February, 1917	551	227	555	1,333
March, 1917	671	246	749	1,666
April, 1917	638	197	690	1,525
May, 1917	543	146	819	1,508

"It will be remembered that the first cases tried in the vagrancy court were heard on January 29th, and after that there has been a steady reduction of crime, whereas a year previous about the same number of offenses occurred in May that were recorded in January.

"The police records show that safe-blowing and pocket-picking have almost been eliminated. The enforcement of the vagrancy law has been the most effective drive ever made in Chicago against pickpockets. The fraternity is either in the House of Correction, or has left the city. More than twenty-five well-known pickpockets are now serving sentences of six months in the House of Correction.

"The records in the clerk's office of the Municipal Court show that in the year 1917 there were 94 cases of vagrancy before the Court, disposed of as

follows: Discharged, 75; dismissed, want of prosecution, 9; committed to the House of Correction, 5; fined, 4; nolle prosequere, 1. Since January 29, 1918, there have been before this branch and disposed of 368 cases, divided as follows: 302 men and 66 women.

"The records show the following disposition as to the male vagrants: 190 found guilty and 112 discharged. The penalties in the 190 cases were as follows:

6 months, House of Correction....34	3 months, House of Correction....34
5 months, House of Correction.... 2	2 months, House of Correction....27
4 months, House of Correction....24	1 month, House of Correction....59
Fined 10, aggregating total fines, exclusive of costs, \$480.00.	

"The record of women offenders shows 37 found guilty and 29 discharged. The penalties in the cases were as follows:

6 months, House of Correction.... 3	2 months, House of Correction....10
4 months, House of Correction.... 2	1 month, House of Correction.... 8
3 months, House of Correction....13	
Fined 1, \$50 and costs.	

"Activity on the part of the Police Department on April 4th, 1918, brought into the Court a number of women offenders. The greatest number of women brought in were charged as 'idle and dissolute, common night walkers and lascivious in speech and behavior'; in addition to this, the medical test of these women showed that the majority of them were diseased. All the women convicted were old offenders, and had been in the Morals Court many times. . . .

"I am satisfied that the charge of vagrancy against this class of offenders is the most effective charge that can be drawn. Indeed, good lawyers defending women so charged have told me that it is the most effective action, so far as results are concerned, that they have known.

"I believe if the commanding officers in the several sections of the city kept a card-index system of the women in their territory plying their trade upon the streets, as the Detective Bureau keeps a card system as to the activities of well-known thieves, that in three to six months any commanding officer could clean his territory of this class of offenders. Eventually, the finger-print method of identification for this class should be legalized.

"The work of the Court has been most satisfactory. It has perhaps taken half of the court hours in the trial of cases, the other half day being devoted to the trial of civil cases, other state and city cases being transferred to this branch, and larceny (picking pockets) and gun (2,807) cases. These latter two classes of cases grew out of the vagrancy work.

"Mr. Joseph P. Ryan, Assistant State's Attorney, assigned to this branch, is entitled to credit for the fair and impartial manner in which he has performed his duties. At the same time he has not permitted the public's interests to be secondary to the demands of that class of individual who have appealed to him in the interest of the professional prostitute and thief. That appeal has gone unheeded in this branch.

"There has been no delay in the trial of these cases. Practically all have been disposed of within three or four days after the arrest. This is a new procedure for this class of offenders in Chicago.

"Not only in the trial and disposition of cases has the city been made safer, but the work of the Court and its publicity to the criminal class have caused that class to leave Chicago, and the undesirable element outside of Chicago to stay away from Chicago. Pickpockets, confidence men and thieves in general discuss their lines of endeavor as commercial travelers discuss theirs, and, like the commercial traveler, they consider the towns and cities to patronize, and the good towns and cities to stay away from. In determining the towns to stay away from, the determining factor is the attitude the authorities show in the enforcement of laws and ordinances."

COURTS—LAWS.

To Regulate Sale and Distribution of Drugs in New York.—(Senate, State of New York, 3d Rdg. 562. Nos. 951, 1261, 1440, Int. 802. March 7, 1918.

Introduced by Legislative Narcotic Committee—read twice and ordered printed and when printed to be committed to the Committee on Public Health—committee discharged, said bill amended, ordered reprinted as amended and when reprinted to be committed to the Committee on Finance—reported favorably from said committee with amendments, by unanimous consent, the rules were suspended and said bill ordered to a third reading and to be reprinted as amended.

An Act—To amend the public health law, so as to provide for the regulation and control of the sale, prescribing, dispensing, dealing in and distribution of cocaine and opium and its derivatives, and making an appropriation therefor.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article eighteen of chapter forty-nine of the laws of nineteen hundred and nine, entitled "An act relating to the public health, constituting chapter forty-five of the consolidated laws," as renumbered article twenty-two by chapter four hundred and eight of the laws of nineteen hundred and sixteen, is hereby renumbered article twenty-four, and sections three hundred and fifty and three hundred and fifty-one of such chapter as renumbered sections four hundred and fifty and four hundred and fifty-one, respectively, by chapter six hundred and nineteen of the laws of nineteen hundred and thirteen, are hereby renumbered five hundred and five hundred and one, respectively.

Section 2. Such chapter is hereby amended by inserting therein a new article, to be article twenty-two thereof, to read as follows:

ARTICLE XXII.

NARCOTIC DRUG CONTROL.

Section 420. Definitions.

- 421. Department of narcotic drug control, commissioner; powers and duties.
- 422. Deputies; secretary, employees.
- 423. Acts prohibited; registry.
- 424. Manufacturer to have certificate.
- 425. Wholesaler to have certificate.
- 426. Orders upon official blanks.
- 427. Acts permitted.
- 428. Possession of drugs further restricted.
- 429. Labels.

430. Possession of drugs authorized by labels.
431. Administration of drugs by hospitals and institutions.
432. Private hospitals and institutions to be authorized.
433. Hypodermic syringe.
434. Records and reports.
435. Drugs to be delivered to department.
436. Exemptions from restrictions.
437. Records confidential.
438. Commitment of addicts; procedure; treatment; discharge.
439. Voluntary hospital commitment.
440. Fraud, deceit, et cetera.
441. False representations, et cetera.
442. Revocation of licenses.
443. Penalties.
444. Exceptions and exemptions not required to be negated.
445. Construction of article.

Section 420. *Definition.* As used in this article.

1. Association. The term "association" includes any combination of two or more persons, not incorporated nor constituting a copartnership.
2. Person. The term "person" includes any corporation, association, copartnership or one or more individuals.
3. Department. The term "department" means the department of narcotic drug control as hereby constituted.
4. Commissioner. The term "commissioner" means the commissioner of narcotic drug control hereby created.
5. Physician. The term "physician" means a licensed practitioner of medicine as defined by article eight of this chapter.
6. Apothecary. The term "apothecary" means a licensed pharmacist or druggist as defined by article eleven of this chapter.
7. Dentist. The term "dentist" means a licensed practitioner of dentistry as defined by article nine of this chapter.
8. Veterinarian. The term "veterinarian" means a licensed practitioner of veterinary medicine as defined by article ten of this chapter.
9. Medicine. The term "medicine" means a drug or preparation of drugs in suitable form for use as a remedial or curative substance.
10. Sale. The term "sale" includes offer for sale and each sale made by any person, whether principal, proprietor, agent, servant, or employee.
11. Dispense. The term "dispense" includes distribute, leave with, give away, dispose of, and deliver to or to an agent to be delivered to.
12. Administer. The term "administer" is limited to personal administration.
13. Cocaine. The term "cocaine" shall include cocoa leaves or any compound, manufacture, salt, derivative or preparation thereof including alpha or beta eucaine or any of their salts or any synthetic compound of any of them, but shall not include decocanized coca leaves or preparations made therefrom or other preparations of cocoa leaves which do not contain cocaine.
14. Opium or its derivatives. The term "opium or its derivatives" shall include opium, morphine, codeine, heroin and any compound, manufacture, salt, derivative or preparation of any of them.

15. Habit forming drugs. The term "habit forming drugs" shall mean cocaine and opium or its derivatives as herein defined.

16. Manufacturer. The term "manufacturer" means one who produces or prepares habit forming drugs from the crude materials or their products or by-products for the use of the drug trade.

17. Wholesaler. The term "wholesaler" includes jobber and means one who sells habit forming drugs in substantial quantities to the trade or for commercial or manufacturing purposes, but not in quantities for personal use or individual consumption and who does not sell at retail.

18. The term "lawful quantity" used in connection with opium or its derivatives means: if opium not more than two grains, if codeine not more than one grain, if morphine not more than one-fourth of a grain, or if heroin not more than one-eighth of a grain in one fluid ounce, or if a solid or semi-solid preparation in one avoirdupois ounce. Such term whenever used shall not apply to cocaine.

Section 421. *Department of drug control; commissioner; powers and duties.* There is hereby created a department of narcotic drug control, the head of which shall be the commissioner of narcotic drug control. The governor, by and with the advice and consent of the senate, shall appoint a commissioner of narcotic drug control who shall hold his office for the term of six years and until his successor is appointed and shall have qualified. A commissioner shall in like manner be appointed upon the expiration of the term. If a vacancy occur in the office of commissioner it shall be filled in like manner for the residue of the term. The commissioner shall execute and file with the comptroller of the state a bond to the people of the state in the sum of five thousand dollars, with sureties to be approved by the comptroller, conditioned for the faithful discharge of his duties and for the due accounting for all moneys received by him as such commissioner. The commissioner shall receive an annual salary of six thousand dollars and his necessary expenses, which salary shall be payable in equal monthly installments. The commissioner is hereby empowered to make all needful or helpful rules, regulations, rulings and decisions which in his judgment may be necessary or proper to supplement or effectuate the purposes and intent of this article or to interpret its provisions or to provide the procedure or detail requisite in his judgment to effectually secure the proper enforcement of its provisions, which rules, regulations, rulings and decisions, when made and promulgated by the commissioner, shall become rules, regulations, rulings and decisions of the department, and until modified or rescinded shall have all of the force and effect of statute. The commissioner may divide the state into not to exceed four districts and maintain a branch administrative office in each, except that in which the capitol is located. It shall be the duty of the commissioner to enforce the provisions of this article and all of the rules, regulations, rulings and decisions of the department. The commissioner may for cause deemed by him to be sufficient, after having given reasonable notice and opportunity to be heard, revoke any certificate of authority issued by the department and revoke, cancel or withhold official blanks issued or applied for. The commissioner shall obtain data and information relative to the extent of drug addiction and the means by which it can be controlled, reduced or eliminated and the means and methods used in its treatment. He shall have the power to inspect and examine any hospital, sanatorium, institution or place in which persons are treated for drug addic-

tion. He shall report annually to the legislature with such recommendations as he may deem warranted. The commissioner and each of his deputies shall have the power to administer oaths, compel the attendance of witnesses, the production of books and papers, and to take proof and testimony concerning all matters within the jurisdiction of the department and in such connection no communication made to a physician shall be deemed confidential. The commissioner shall fix the prices to be paid for blanks procured from the department and the fees, not specifically fixed herein, to be paid upon the issuance of any certificate of authority authorized to be issued by the department. The trustees or other officers having by law the custody of public buildings at the state capitol shall provide for and assign to the commissioner offices for conducting the business of the department.

Section 422. *Deputies; secretary; employees.* The commissioner may appoint and at pleasure remove three deputy commissioners to be known as first, second and third deputy commissioner respectively. Each deputy commissioner shall within the territorial district of the state in and for which he may be assigned to duty exercise all of the powers of the commissioner except the power of appointment to positions, the power to grant and revoke certificates of authority and the power of making and promulgating rules, regulations, rulings and decisions. Each deputy commissioner shall receive an annual salary of three thousand five hundred dollars and his necessary traveling expenses, which salary shall be payable in equal monthly installments. The commissioner shall appoint and may at pleasure remove a secretary, who shall also act as financial clerk, and, under the direction of the commissioner, have charge of the collection of the receipts and disbursement of the moneys appropriated for the expenses of the office. The secretary shall receive an annual salary of three thousand dollars, payable in equal monthly installments. The secretary and each deputy commissioner shall give a bond to the people of the state in the sum of three thousand dollars with such sureties as shall be approved by the commissioner, and shall before entering upon the performance of his duties take and subscribe the constitutional oath of office. The commissioner may also appoint counsel and such employees in his office as may be necessary and fix the compensation of each within the appropriation made and available for such purpose.

Section 423. *Acts prohibited; registry.* No person shall possess, sell, distribute, administer or dispense cocaine or opium or its derivatives except as expressly and specifically authorized by the provisions of this article, and any unauthorized possession, sale, distribution, administration or dispensation of such drugs is hereby declared to be dangerous to the public health and a menace to the public welfare. No manufacturer, wholesaler, apothecary, physician, dentist, veterinarian or private hospital, sanatorium or institution maintained or conducted in whole or in part for the treatment of disability or disease or inebriety or drug addiction shall purchase, receive, possess, sell, distribute, prescribe, administer or dispense cocaine or opium or its derivatives unless prior thereto he shall have registered with the department his name or style, place of residence and place or places where such business is to be carried on, and received from the department a certificate authorizing him to carry on such business. During the month of January after this article takes effect he shall so register with the department. During each month of June thereafter he shall, in like manner, register with the department and for such

second and each subsequent registry shall pay to the department a fee of one dollar.

Section 424. *Manufacturer to have certificate.* Each manufacturer shall before selling or distributing any cocaine or opium or its derivatives within or for use or distribution within the state make application to and receive from the department a manufacturer's narcotic drug certificate authorizing the sale and distribution by him of such drugs within or for use or distribution within the state. He may sell and distribute such drugs within or for use or distribution within the state only so long as such certificate shall remain unrevoked.

Section 425. *Wholesaler to have certificate.* Each wholesaler shall, before selling or distributing any cocaine or opium or its derivatives within or for use or distribution within the state, make application to and receive from the department a wholesaler's narcotic drug certificate authorizing the sale and distribution by him of such drugs within or for use or distribution within the state. He may sell and distribute such drugs within or for use or distribution within the state only so long as such certificate shall remain unrevoked.

Section 426. *Orders upon official blanks.* A hospital, sanatorium or other institution maintained by the United States or the state or any of its political subdivisions, or a public or private hospital or other institution in which persons are treated for disability or disease, or a public hospital, sanatorium or institution in which persons are treated for inebriety or drug addiction, or a private hospital, sanatorium, institution or place in which persons are treated for inebriety or drug addiction which shall have an unrevoked certificate of authority issued by the department, or a wholesaler, apothecary, physician, dentist or veterinarian may possess cocaine or opium or its derivatives only after he shall have obtained the same from the department or in pursuance of a written order to the manufacturer, wholesaler or apothecary offering to sell the same which shall contain the date of the order, the name and amount of the drug ordered and the name and address of the person ordering the same, which said order shall be made in triplicate upon serially numbered blanks to be procured from the department. The person giving the order shall retain one of such triplicate orders on file for a period of two years and send the other two to the person to whom the order is given, who shall retain one of said duplicates on file for a period of two years and upon filling the order shall forthwith mail the other to the department. No order shall be given to a manufacturer or wholesaler unless such manufacturer or wholesaler at the time of the giving of such order is authorized by certificate of the department to sell or distribute the drug ordered within or for use or distribution within the state.

Section 427. *Acts permitted.* Subject to the rules, regulations, rulings and decisions of the department governing the same.

1. Preparations and remedies. A person may manufacture, sell, dispense or possess preparations and remedies, not otherwise prohibited by law, which do not contain more than lawful quantity of opium or its derivatives; also liniments, ointments and other preparations containing any of such drugs which are prepared and suitable for external use only; provided that such remedies and preparations are manufactured, sold, dispensed or possessed as medicines and not for the purpose of evading the intention and purposes of this article.

2. Veterinarians. A veterinarian may possess cocaine or opium or its

derivatives in such quantities as he may require for the purpose of administering or dispensing and may administer or dispense the same in the course of his professional practice. He may prescribe any of such drugs but not for use by a human being. Each prescription issued by him shall be signed by him and contain in legible English the name and amount of the drug prescribed, the name and address of the owner of the animal for which and the date when the prescription is issued.

3. Dentists. A dentist may possess cocaine or opium or its derivatives in such quantities as he may require for the purpose of administering the same in the course of his professional practice. He may administer the same to persons under his immediate treatment but only in quantities necessary for such treatment.

Apothecaries. An apothecary may, upon prescription written upon an unofficial prescription blank, signed by and containing the office address of a physician and the name, age and address of the person for whom and the date when issued, dispense cocaine or opium or its derivatives, provided such prescription does not contain more than five grains of cocaine or more than thirty grains of opium or more than six grains of codeine or more than four grains of morphine or more than two grains of heroin; also upon a like prescription if it contains any of such drugs in excess of said respective quantities if it be stated upon the prescription that it is to be used in the treatment of a surgical case or a disease other than drug addiction. Each such original prescription, serially numbered, shall be kept by him in a separate file for a period of two years and such prescription shall not be refilled; provided, however, that if any such prescription does not contain more than lawful quantity of any such drug it need not be separately filed; and provided further, that if any such prescription calls for an exempt preparation or remedy prepared in accordance with the "U. S. P.," "N. F.," or other recognized or established formula usually carried in stock by a dealer and sold without a prescription, it need not be separately filed and may, upon request, be refilled.

He may also, upon the prescription in writing, signed by a physician and containing his office address and the name, age and address of the person for whom, and the date when issued, within four days from such date, otherwise dispense cocaine or opium or its derivatives within or in excess of the quantities hereinbefore mentioned if such prescription be written upon a serially numbered official prescription blank delivered to him in duplicate, provided he keep one of said duplicates in a separate file for a period of two years and within twenty-four hours mail the other duplicate to the department. Such prescription shall not be refilled.

He may also upon the prescription in writing dated and signed by a veterinarian and containing his office address and the name and address of the owner of the animal for which the drug is prescribed dispense cocaine or opium or its derivatives, provided he keep such prescription on file for a period of two years. Such prescription shall not be refilled.

5. Physicians. A physician may in the course of the legitimate practice in good faith of his profession and for the purpose of relieving or preventing pain or suffering on the part of a patient, or to effect a cure, administer, prescribe or dispense cocaine or opium or its derivatives as follows:

He may upon an unofficial prescription blank issue a prescription which does not contain more than five grains of cocaine, or more than thirty grains of

opium or more than six grains of codeine or more than four grains of morphine or more than two grains of heroin. He may also upon an unofficial prescription blank issue a prescription for such quantity of any of such drugs in excess of such respective quantities as may reasonably be required in the treatment of a surgical case or a disease other than drug addiction, provided such fact be stated upon the prescription. Each other prescription for any of such drugs shall be written upon a serially numbered official prescription blank in triplicate to be procured from the department, signed by him and containing in legible English or Latin the name and amount of the drug prescribed, the name, age and address of the person for whom and the date when the prescription is issued. He shall issue the original and one other of such triplicate prescriptions for delivery to an apothecary and shall retain the other copy on file for a period of two years.

He may administer or dispense to a patient whom he is treating not to exceed two grains of cocaine or fifteen grains of opium or three grains of codeine or two grains of morphine or one-fourth of a grain of heroin.

He may while absent from his office in personal attendance upon a patient whom he is treating dispense, to be taken in his absence, not to exceed fifteen grains of opium or three grains of codeine or two grains of morphine or one-fourth of a grain of heroin.

If he otherwise administer or dispense any of such drugs he shall record in writing upon a serially numbered official physician's dispensing blank in duplicate to be procured from the department, in legible English or Latin the name and quantity of the drug and the form in which administered or dispensed, the name, age and address of the person for whom and the date when administered or dispensed and shall sign the same. He shall keep the original of such dispensing blanks on file for at least two years and shall, within twenty-four hours, mail the copy to the department.

The provisions of this section relating to the conditions under which unofficial and official prescription and dispensing blanks may be used are, to the department, directory only and may by rule or regulation of the department, from time to time, be changed or modified to meet existing conditions.

Section 428. *Possession of drugs further restricted.* No manufacturer, wholesaler, apothecary, physician, dentist or veterinarian shall obtain, possess, control, distribute or dispense any cocaine or opium or its derivatives for any purpose other than the use, sale or distribution thereof by him in the conduct of a lawful business in said drugs or in the legitimate conduct or practice in good faith of his business or profession.

Section 429. *Labels.* Whenever an apothecary pursuant to a prescription written upon an official prescription blank shall dispense cocaine or opium or its derivatives or whenever a physician shall dispense any of such drugs a record of which is required to be kept upon an official physician's dispensing blank, he shall securely affix to the container of such drug a label stating in legible English the name and address of the physician prescribing or dispensing and the apothecary, if any, dispensing and the date when and the name and address of the person for whom and name and quantity of the drug dispensed and contained in the container.

Section 430. *Authorized possession of drugs by consumer.* A person for whom cocaine or opium or its derivatives shall have been dispensed by an apothecary or physician, for the dispensing of which no label is required to be

affixed to the container, and the owner of an animal for which any of such drugs shall have been dispensed by a veterinarian or an apothecary upon the prescription of a veterinarian may lawfully possess the same. A person for whom any of such drugs shall have been dispensed by an apothecary or physician for the dispensing of which a label is required to be affixed to the container may lawfully possess in the container delivered to him by the apothecary or physician and upon which the label signed by the apothecary or physician is affixed an amount of such drug not exceeding that stated upon the label.

Section 431. *Administration of drugs by hospitals and institutions.* A hospital, sanatorium or other institution maintained by the United States or the state or any of its political subdivisions, or a public hospital or other institution in which persons are treated for disability or disease other than drug addiction, or a public hospital, sanatorium or institution in which persons are treated for inebriety or drug addiction or a private hospital or institution registered with the department in which persons are treated for disability or disease other than drug addiction or a private hospital, sanatorium, institution or place in which persons are treated for inebriety or drug addiction and which shall have an unrevoked certificate of authority issued by the department may, under the supervision of a physician, administer cocaine or opium or its derivatives to inmates who are under treatment as patients.

Section 432. *Private hospitals and institutions to be authorized.* Cocaine or opium or its derivatives shall not be administered in nor shall any person be treated for inebriety or drug addiction in a private hospital, sanatorium, institution or place maintained or conducted in whole or in part for the treatment of inebriety or drug addiction unless a certificate of authority shall first have been procured from the department authorizing the same and then only so long as such certificate shall remain unrevoked.

Section 433. *Hypodermic syringe.* No person except a dealer in surgical instruments, apothecary, physician, dentist, veterinarian or nurse, attendant or interne of a hospital, sanatorium or institution in which persons are treated for disability or disease shall at any time have or possess a hypodermic syringe or needle unless such possession be authorized by the certificate of a physician issued within the period of one year prior thereto.

Section 434. *Records and reports.* 1. *Manufacturers.* Each manufacturer who shall sell or distribute any cocaine or opium or its derivatives within or for use or distribution within the state shall keep a record in detail of all such drugs manufactured by him and a record of all such drugs sold or distributed by him within or for use or distribution within the state, which record shall contain the date of each such sale or distribution, the name and amount and form of each such drug so sold or distributed and the name and address of each person to whom so sold or distributed. He shall quarterly, or oftener if required by the commissioner, make and mail to the department a detailed report, on oath, setting forth all of the information contained in such records.

2. *Wholesalers.* Each wholesaler who shall purchase or receive or sell or distribute any cocaine or opium or its derivatives within the state or for use or distribution within the state shall keep a record in detail of all such drugs so purchased or received by him, which shall contain the date of each purchase or receipt, the name and address of the person from whom and the name and quantity of each such drug so purchased or received. He shall also keep a like record in detail of all such drugs sold or distributed by him within or for use

or distribution within the state which shall contain the date of each such sale or distribution, the name, amount and form of each such drug so sold or distributed and the name and address of each person to whom so sold or distributed. He shall quarterly, or oftener if required by the commissioner, mail to the department a detailed report on oath setting forth all of the information contained in such records.

3. Apothecaries. Each apothecary shall keep a record of all cocaine or opium or its derivatives purchased or received by him, which shall contain the date of each purchase or receipt, the name and address of each person from whom and the name and quantity of each such drug purchased or received. He shall also keep a record of the amount of each of such drugs sold by him at wholesale or sold or dispensed by him upon official order blanks which shall contain the date when, the name and address of each person to whom and the name and quantity of each such drug so dispensed. He shall also keep a record of the amount of each of such drugs used by him in the preparation of preparations and remedies, together with the amount used for each such purpose and how such preparations or remedies have been disposed of. He shall also keep a record of the gross amount of each of such drugs dispensed by him upon prescription. He shall as required by the commissioner, make and mail to the department a report setting forth such of the information contained in such records as the commissioner may require, together with the amount of each such drug on hand upon the date of such report.

4. Physicians. Each physician shall keep a record of all cocaine or opium or its derivatives purchased or received by him, which shall contain the date of each purchase or receipt, the name and address of each person from whom and the name and quantity of each such drug purchased or received. He shall also keep a record of the gross amount of each of such drugs administered by him to patients, dispensed by him to patients while absent from his office in personal attendance upon them and dispensed by him to patients in quantity not exceeding lawful quantity. He shall also keep a record of each of such drugs otherwise dispensed by him which shall contain the date when, the name and address of each person to whom and the name and amount of each such drug so dispensed. He shall, as required by the commissioner, make and mail to the department a report setting forth such of the information contained in such records as the commissioner may require, together with the amount of each such drug on hand upon the date of such report.

5. Hospitals, sanatoriums and other institutions. Each hospital, sanatorium or other institution authorized by the provisions of this article to administer cocaine or opium or its derivatives shall keep a record which shall contain the date of each purchase or receipt, the name and address of each person from whom and the name and quantity of each such drug purchased or received. It shall also keep a record of the gross amount of each such drug administered. It shall, as required by the commissioner, make and mail to the department a report setting forth the information contained in such records, together with the amount of each such drug on hand upon the date of such report.

6. Dentists and veterinarians. Each dentist and veterinarian shall keep a record which shall contain the date of each purchase or receipt by him of cocaine or opium or its derivatives, the name of each person from whom and the name and amount of each such drug purchased or received. Each dentist shall also keep a record of the gross amount of each such drug administered.

Each veterinarian shall also keep a record of the gross amount of each drug administered or dispensed. He shall as required by the commissioner, make and mail to the department a report setting forth the information contained in such records, together with the amount of each drug on hand upon the date of such report.

The commissioner may require each person authorized to manufacture, distribute, dispense, sell, prescribe or administer any of such drugs, to keep such additional records and make such other further or different reports as he may determine. Each prescription written upon an official blank and each other record, except prescriptions required to be kept by an apothecary, shall be contained in books the leaves of which shall be permanently bound together. Each record required by the provisions of the article to be kept shall be kept in a place easily accessible and shall be accessible to the department for a period of at least two years.

Section 435. *Drugs delivered to department.* All drugs which have been seized and judicially determined to have been unlawfully possessed or the title to which shall have ceased and the same shall have come into the hands of a peace officer shall, upon the direction of a court or magistrate, be delivered to the department. Drugs may be surrendered to the department. All drugs in the final possession of the department may be disposed of by the commissioner.

Section 436. *Exemptions from restrictions.* The provisions of this article restricting the possession of cocaine, opium or its derivatives shall not apply to common carriers or warehousemen or their employes engaged in lawful transportation or storage of such drugs, nor to public officers or employes while engaged in the performance of their official duties, nor to temporary incidental possession on the part of employes or agents of persons lawfully entitled to possession.

Section 437. *Records confidential.* All papers, records, information, statements, and data filed with the department or kept by any person pursuant to the provisions of this article, and all records of proceedings or actions taken by the commissioner or any of his deputies pursuant to the provisions of this article, shall be regarded as confidential, and shall not be open to inspection by the public or any person other than the official custodian of such records, such persons as may be authorized by law or the commissioner to inspect such records, and the persons duly authorized to prosecute or enforce the federal statutes or the laws of the state of New York, but then only for the purpose of such prosecution or enforcement. No employe or other person shall disclose or aid in the disclosure of such, or any part of such, papers, records, information, statements, or data to any person not authorized by law or the commissioner to inspect the same.

Section 438. *Commitment of addicts; procedure; treatment; discharge.* The habitual use of cocaine, opium or its derivatives, except as administered, prescribed or dispensed by a physician, is hereby declared to be dangerous to the public health and safety. Whenever a complaint is made to any magistrate that any person is so addicted, or upon the voluntary application to him of an addict, he may, if satisfied of the truth thereof and that the person is suffering from such drug addiction, commit such person to a state, county or city hospital, or institution licensed under the state lunacy commission or any correctional or charitable institution maintained by the state or any political subdivision thereof, or private hospital, sanatorium or institution having an

unrevoked certificate of authority from the department, for the treatment of disease or inebriety. Any court having jurisdiction of a defendant who is a prisoner in a criminal action or proceeding, if it appears that such defendant is an habitual user of any of such drugs and is suffering as a result of such addiction, may likewise commit such defendant, at any stage of such action or proceeding and may direct a stay of proceedings, or suspend sentence or withhold conviction pending the period of such commitment. Whenever the chief medical officer of such an institution shall certify to the committing magistrate or court that any person so committed has been sufficiently treated, or give any other reason which is deemed by the magistrate or court to be adequate and sufficient, he may in accordance with the terms of commitment discharge the person so committed, or return such person to await the further action of the court, provided, however, that when such a commitment is to an institution under the jurisdiction of a department of correction, or other similar department in a city of the first class, where there is a parole commission established pursuant to law, such commission shall act in the place and stead of a chief medical officer for the purpose of making such a certificate.

Section 439. *Voluntary hospital commitment.* Any public hospital, sanatorium or institution may accept as a charity patient any person voluntarily applying for treatment for drug addiction and any such institution may, if a voluntary applicant signs a statement that he is suffering from drug addiction and desires treatment, in the same manner and subject to the same rules and restrictions as if committed by a magistrate, receive such person without formal commitment, with like effect as if formally committed, subject to discharge when sufficiently treated, or for any other reason deemed adequate. The commissioner or any local health board or officer may likewise on such an application and signed statement place the applicant in any hospital receiving such patients at public expense. The department shall adopt blank forms of applications and orders for such treatment and on request shall furnish copies thereof to any such institution or officer. The provisions of this section shall not restrict the right of any hospital, sanatorium or institution to accept and treat patients for drug addiction at other than public expense.

Section 440. *Fraud, deceit, et cetera.* Any fraud, deceit, misrepresentation, subterfuge, concealment of a material fact or the use of a false name or the giving of a false address in obtaining treatment in the course of which cocaine or opium or its derivatives in excess of lawful quantity shall be prescribed or dispensed or in obtaining any supply of such drugs shall constitute a violation of the provisions of this article. For the enforcement of the provisions of this article statements, representations or acts herein referred to shall not be privileged as confidential communications.

Section 441. *False representations, et cetera.* No official blanks shall be issued to any person who shall have been convicted of a violation of any of the provisions of this article unless the commissioner be satisfied, from proof presented to him, that such violation was not willful. No person shall for the purpose of obtaining any quantity of cocaine or opium or its derivatives falsely assume the title of or represent himself to be a wholesaler, pharmacist, druggist, physician, dentist or veterinarian or to be engaged in the conduct of lawful business in or use or distribution of any of such drugs, nor utter any false or forged order or prescription for or label affixed to the container of any of such

drugs or alter, deface or remove any such label or keep any false record or make any false report under the provisions of this article.

Section 442. *Revocation of licenses.* Any license heretofore issued to any physician, dentist, veterinarian, pharmacist, druggist or registered nurse may be revoked or suspended by the proper officers or boards having power to issue licenses to any of the foregoing upon proof that the licensee is addicted to the use of any habit-forming drug or drugs after giving such licensee reasonable notice and opportunity to be heard. Whenever it shall appear that such licensee has fully recovered and is no longer an addict to any of such drugs, such board may grant a rehearing and in its discretion reissue or reinstate the license of such licensee. Whenever any pharmacist, druggist, physician, dentist, veterinarian or registered nurse shall have been convicted of the violation of any of the provisions of this article, any officer or board having power to issue licenses to any such physician, dentist, veterinarian, pharmacist, druggist or registered nurse may, after giving such licensee reasonable notice and opportunity to be heard, suspend or revoke the same.

Section 443. *Penalties.* A violation of any of the provisions of this article shall constitute a misdemeanor.

Section 444. *Exceptions and exemptions not required to be negatived.* In any complaint, information, indictment or other writ or in any action or proceeding laid or brought under or for the enforcement of any of the provisions of this article it shall not be necessary to negative an exception or exemption and the burden of proof shall be upon the defendant or person proceeded against to establish affirmatively any exception or exemption claimed.

Section 445. *Construction of article.* The provisions of this article shall be construed not as an act in derogation of the powers of the state but as one intended to aid the state in the execution of its duties, and shall be liberally construed so as to carry into effect the objects and purposes hereof. The provisions of this article, so far as they are substantially the same, or cover the same subject-matter, as those of any law repealed by this act, shall be construed as a continuance of such repealed law, modified or amended, according to the language employed herein, and not as new enactments. References in a law not repealed to the provisions of any law incorporated into this article or repealed by this act shall be construed as applying to the provisions so incorporated. The meaning and effect of the terms and language used herein shall be construed in accordance with the provisions of the statutory construction law.

Section 2. The repeal of a law, or any part of it, by the provisions of this act, shall not affect or impair any act done or right accruing, accrued, or acquired, or penalty, forfeiture or punishment incurred prior to the time when this act takes effect under or by virtue of the law so repealed, but the same may be asserted, enforced, prosecuted or inflicted as fully and to the same extent as if such law had not been repealed; and all actions or proceedings, civil or criminal, commenced under or by virtue of any law so repealed and pending when this act takes effect, may be prosecuted and defended to final effect in the same manner as they might under any such law so repealed.

Section 3. All of article eleven-a of chapter forty-nine of the laws of nineteen hundred and nine, entitled "An act in relation to the public health, constituting chapter forty-five of the consolidated laws," as added by chapter three hundred and sixty-three of the laws of nineteen hundred and

fourteen and as subsequently added to and amended, and sections seventeen hundred and forty-five and seventeen hundred and forty-six of chapter eighty-eight of the laws of nineteen hundred and nine, entitled "An act providing for the punishment of crime, constituting chapter forty of the consolidated laws," as added, substituted or amended; and all acts or parts of acts inconsistent with the provisions of this act are hereby repealed, such repeal to take effect on the first day of February, nineteen hundred and nineteen.

Section 4. Sections four hundred and twenty-one and four hundred and twenty-two of this article and so much of section four hundred and twenty-three of this article as pertains to registry shall take effect on the first day of November, nineteen hundred and eighteen, the other sections of such article shall take effect on the first day of February, nineteen hundred and nineteen.

Section 5. The sum of twenty-seven thousand four hundred dollars (\$27,400), or so much thereof as shall be necessary, is hereby appropriated for the purpose of carrying into effect the provisions of this act. The said amount shall be available for the period of eight months ending June thirtieth, nineteen hundred and nineteen, and distributed as follows, subject to all of the provisions of the act making appropriations for the support of government:

PERSONAL SERVICE.

Salaries, Regular—

Commissioner	\$4,000.00
Deputy, 3 at annual rate of \$3,500 each.....	7,000.00
Secretary	2,000.00
Stenographer or filing clerk, 3 at annual rate of \$1,200 each.....	2,400.00
Stenographer or filing clerk, 3 at annual rate of \$1,000 each.....	2,000.00

MAINTENANCE AND OPERATION.

For expenses of maintenance and operation other than personal service\$10,000.00
 Section 6. This act shall take effect immediately.

Commitment of Insane in Louisiana.—(Senate Bill No. 79. By Mr. Caldwell.) An act to provide proper proceedings relative to the insane and for the admission of insane persons, whether indigent or otherwise, to the insane hospitals of the state; and to authorize the respective Boards of Administrators to determine the question of indigency, and in all proper cases to require reasonable compensation for care and treatment; and to authorize suit for recovery; and to authorize the parole of patients; and to punish ill treatment of inmates or patients.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That whenever it shall be made known to the judge of the District Court by written complaint or information of any respectable citizen that any insane person within his jurisdiction is indigent and ought to be sent to or confined in one of the state hospitals for the insane, or complaint that though not indigent he should be confined, it shall be the duty of said judge of the District Court having jurisdiction of interdiction to issue his warrant ordering such person to be brought in court before him, and thereupon said judge shall cause to be summoned two licensed and reputable physicians, one of whom shall be the coroner of the parish, and the other the physician of the suspected person, if he has

any, and neither shall be related by affinity or consanguinity to him or have any interest in his estate. The judge and the two physicians shall constitute a commission to inquire whether such person be insane and a suitable subject for the hospital for the care and treatment of insane persons, and for that purpose the judge shall also cause to be summoned witnesses who know the person suspected of insanity. The physicians shall in the presence of the judge, by personal examination of such suspected person and by inquiring, satisfy themselves and the judge as to the mental condition of the person being examined. If the two physicians do not agree, the judge shall determine the issue. The provisions of this act shall not interfere with the present method of commitments of insane by the Recorders of City Courts of New Orleans upon affidavits; provided, however, that the coroner's certificate required under Section 2 of this act be likewise furnished for the insane committed by the Records of the City Courts of New Orleans.

Section 2. Be it further enacted, etc., That the coroner shall ascertain all of the necessary facts to enable him to answer properly the questions embodied in the following form of certificate, to-wit:

State of Louisiana, Parish of.....

The coroner certifies as follows to the following interrogations:

Name of patient..... Nativity..... Race.....
 Sex..... Civil conditions..... Married, Single, Widowed,
 Divorced..... Age..... Present occupation of patient.....
 Former occupation..... How long since patient worked regularly or
 attended to business..... How well does the patient attend to ordinary
 work..... Where born..... Name and address of nearest friend
 or relative..... Relation of same to patient..... Nearest
 telegraph and railroad station or steamboat landing to said friend or relative..
 In the event of death would family wish to claim the body at
 their expense..... Is the patient a criminal insane..... Give
 crime committed..... Present weight of patient..... When did
 present attack of insanity begin..... Present residence.....
 How long lived in the present place of residence..... Place of resi-
 dence for past two years..... If of foreign birth, how long a resident
 of the United States..... Can patient speak English..... Port
 of landing..... Date of landing..... Name of ship.....
 Birthplace of father..... Birthplace of mother..... Maiden
 name of mother..... Education—liberal, good, professional.....
 Read..... Write..... Can patient count ten..... Religion
 Number of children had, if a female..... Age of youngest
 child, if patient is a female..... Name and address of guardian.....
 Value of property of self or husband..... Of parents, if the
 patient is a minor..... Is the patient addicted to the use of intoxicat-
 ing liquors, tobacco, morphine, cocaine or other injurious drugs.....
 If so, to what extent..... Is the patient addicted to any injurious, im-
 proper or immoral habits..... If so, to what extent..... State
 fully and in detail any physical symptoms, injury or disease from which the
 patient is at present suffering..... Is the patient affected by paralysis
 Dropsy..... Blindness..... Deafness..... Dumb-
 ness..... Incontinence of urine or feces..... Hysteria.....
 Emaciation..... Insomnia..... Cancer..... Tuberculosis....

..... Pellagra..... Hernia..... Epilepsy..... Uteric or pelvic disorders..... Is the patient pregnant..... Is the patient now sick in bed..... Is the patient now suffering from acute or chronic alcoholism or delirium tremens..... What were the first symptoms..... Were the symptoms gradual or rapid in onset..... State fully the present symptoms of insanity, particularly whether the patient is violent..... Destructive..... Untidy..... Excited..... Depressed..... Homicidal..... Suicidal..... If homicide or suicide has been attempted or threatened, state when and in what manner..... Does the patient talk to himself..... Assume peculiar attitudes..... Hear voices..... Believe he is being persecuted..... State in what manner..... State any changes that have occurred in the condition of mind or body of the patient since the onset of the present attack of insanity..... Has any restraint or confinement been imposed on the patient, the nature and duration..... Is the patient now in jail..... If not, state in whose custody said patient is, giving name, post-office and telegraph address, distance from telegraph office and railroad station..... If there have been any attacks of insanity previous to the present one, when did they occur..... Give the duration, symptoms and character of each..... State the length of intervals between the attacks..... Was the patient entirely sane and rational between attacks..... If the patient has ever been an inmate of any hospital or other place of detention and treatment for the insane, state when, where and whether he was discharged or recovered or otherwise..... If any of the patient's family or near relatives are or have been insane, mentally defective, epileptic, neurotic, alcoholic, tuberculous, et cetera, state the fact..... The degree of consanguinity..... Whether maternal or paternal..... What, in the opinion of the examining physicians, are the causes of the patient's insanity..... The predisposing causes..... Name and address of physician who last attended patient..... What treatment has been given..... With what effect..... Is the patient normally below or above the average standard of intelligence..... Is the patient a congenital idiot or imbecile..... Describe the appearance, manner and all insane acts and speech of the patient during examination..... State fully anything else bearing on the case as indicating insanity.....

Coroner of Parish.

If the judge determines that said person is insane, he shall make the following order or warrant:

State of Louisiana, Parish or City of....., to-wit: To the sheriff of the Parish of..... and to the superintendent of the state hospital, greeting:

Whereas, I,, judge of said Parish of....., and two physicians, constituting a commission of inquiry, et cetera, into the sanity of said....., have this day adjudged the said..... to be insane and a suitable subject for a hospital for the care and treatment of insane persons, and a citizen of this state; I do, in the name of the said state, command you, the said sheriff, to deliver the said..... together with this warrant, to the superintendent of the..... State Hospital at..... that having a vacancy and being the nearest appropriate hospital, or to the duly

authorized agent of said hospital, to be delivered by him to the said superintendent. And you, the said superintendent, with a vacancy, are hereby required to receive into the said hospital, and into your care and charge, the said....., to be treated and cared for as in insane person.

And I do herewith transmit to you, the said superintendent, the interrogatories and answers thereto, taken by said coroner, touching the sanity of said....., a copy of which has this day been delivered by me to the clerk of court of the said parish or city.

Given under my hand this..... day of, nineteen hundred and.....

Judge.

Each parish or corporation shall be provided, upon application, by the superintendents of the insane hospitals, with all necessary blank forms. The record of proceedings under this section, together with the warrant of commitment, shall be made in duplicate, one copy of which shall be delivered by the judge to the sheriff of the parish, and the other copy filed with the office of the clerk of court.

If the judge shall commit the suspected person to the insane hospital, he shall make out his order or warrant as aforesaid to the sheriff of the parish, commanding him to convey the insane person to the insane hospital, for which duty the sheriff shall have the right to demand the same fees as are now allowed by law for the conveyance of convicts to the penitentiary of the state, which shall be paid out of the parish treasury, upon the order of the district judge, and likewise all other expenses previously incurred in bringing said insane person before the district judge. Which charges and expenses shall be placed by the sheriff to the credit of the Sheriff's Salary Fund, as provided by Act No. 143 of 1916.

Section 3. Be it further enacted, etc., That persons adjudged insane in accordance with the foregoing proceedings shall be received in the state hospitals for the insane, and there receive proper care and treatment. In any case, however, where it shall be made to appear to the Board of Administrators, or to the superintendent, that the patient is not in fact indigent, but will be able to bear the expense of care and treatment, then an agent of the hospital shall be authorized to make an investigation to determine the question of indigency. He shall have power to subpoena witnesses, take testimony under oath, and to examine any public records relating to the estate of an inmate or of a relative liable for his or her support. All such information shall be submitted to the Board of Administrators. The board, or a committee thereof, appointed for that purpose, shall determine whether such relative shall be required to pay for the support of such inmates or whether such charges shall be made against the estate of an inmate. An order shall be issued to the persons who are determined liable for such payments, requiring them to pay monthly, quarterly or otherwise, as may be arranged, to the board such amount as it or the committee shall deem reasonable and proper. The board shall make all reasonable and proper efforts to collect such amount, and in case of inability to collect from a period of three months, the board shall be authorized to direct the district attorney of the district wherein the debtors reside, to institute civil action in the name of the state to recover the amount due, with interest. All moneys received, as herein provided, or by such suit instituted, shall be paid to the treasurer of each of such institutions. The district attorney shall be allowed as compensation a penalty

of ten per cent of the amount recovered, which shall be assessed as a penalty against the debtor, and recovered by way of costs. The clerk of court shall certify in all cases that the insane person is "indigent" or "not indigent," according to information.

Section 4. Be it further enacted, etc., That a husband may be held liable for the support of his wife while an inmate of any of said institutions, and a wife for a husband, a father or mother for a son or daughter, and a son or daughter or both for a father or mother, in any case where the Board of Administrators have determined, as hereinabove provided for, that the inmate is not an indigent; provided that in any case where suit is authorized, upon the determination of the Board of Administrators, the court of jurisdiction of the alleged debtor shall have the right to review the question of indigency, as determined by the Board of Administrators, and provided that such alleged debtors shall be permitted to present the defense that the finding of the board is either unreasonable or erroneous.

Section 5. Be it further enacted, etc., That the Board of Administrators may authorize the superintendent to grant paroles to patients, upon such terms and conditions as may, in his judgment, in each particular case, be for the advantage of such patients, provided that he shall have the authority, also, to recall such patients at any time.

Section 6. Be it further enacted, etc., That whoever shall assault, assault and batter, or strike or maltreat a patient or inmate of any insane hospital of the state shall, upon conviction, be fined not exceeding five hundred (\$500.00) dollars and imprisoned not exceeding six months, at the discretion of the court.

Section 7. Be it further enacted, etc., That all laws or parts of laws on the same subject matter, in conflict herewith, be and the same are hereby repealed, and especially is Act 253 of 1910 repealed.—W. O. Hart, New Orleans.

PAROLE—PROBATION

Parole in Indiana During Twenty-one Years.—The indeterminate sentence law has attained its majority. It is old enough to stand alone. It is engrafted into both law and practice and is a part of the common mind of our citizenship. Our people would not be willing to change and go back to the old form of definite sentence and harsh punishments. The men and women who have been paroled from the state penal institutions have had care and treatment and training in the endeavor to reclaim them and restore them to citizenship. The results as here given show the fruit of the reformatory system in operation in this state under the indeterminate sentence and parole law for a period of twenty-one years. It is a matter in which the people of Indiana ought and do take great pride.

From April 1, 1897, to April 1, 1918—twenty-one years—11,903 men and women were paroled from the State Prison, the Reformatory and the Woman's Prison under the operations of this law. Of this number, 7,191 having made good reports for the required length of time after their release, never less than a year, were given their final discharge. In the case of 416, the maximum of the term for which they were sentenced expired while they were on parole and they were no longer held under supervision. One hundred and eighty-five died, 742 were reporting at the close of the year. This leaves 3,369 to be accounted for. They were the delinquent ones. All of them, constituting 28.26 per cent, of the whole number paroled, violated their paroles. One thousand, nine hundred and

twenty-seven were apprehended and returned to the institutions. The remaining 1,442 are at large.

A careful record of the earnings and expenses of these paroled prisoners¹ is kept. The reports show an aggregate of \$3,393,324.09 earned, in addition to which many received board, lodging and laundry. Personal expenses amounting to \$2,761,349.66 were reported, leaving a balance on hand of \$631,974.43. The fire at the Reformatory in February, 1918, destroyed some of the records and the earnings for four months are not included.

INDETERMINATE SENTENCE AND PAROLE LAW, APRIL 1, 1897 TO APRIL 1, 1918				
	State Prison, Michigan City.	¹ Reforma- tory, Jefferson- ville.	Woman's Prison, Indian- apolis.	Total.
Total number released on parole...	4,694	6,849	360	11,903
Returned for violation.....	841	969	97	1,927
Delinquent and at large.....	441	961	40	1,442
Served parole and granted discharge	2,865	4,160	165	7,191
Sentence expired during parole....	141	249	26	416
Died while on parole.....	74	102	9	185
Reporting April 1, 1918.....	332	388	22	742
Total	4,694	6,849	360	11,903
Percentage of unsatisfactory cases.	27.31	28.46	38.05	28.26
Earnings of paroled prisoners..	\$1,409,522.55	\$1,976,778.18	\$7,023.36	\$3,393,324.09
Expenses while on parole....	1,101,272.40	1,656,239.16	3,838.10	2,761,349.66
Savings	\$ 308,250.15	\$ 320,539.02	\$3,183.26	\$ 631,974.43

Tenth Annual Conference of the National Probation Association.—

A representative attendance of probation officers, judges and others engaged in the social work of courts gathered at Kansas City May 14-21, to discuss their work. It was brought out at the meetings that the probation officers' problems have been intensified by war conditions, but except for the difficult problem of the young girl delinquent, which has been acute in many communities, it was the general testimony that delinquency has not increased through the war. The work of the probation officers, however, is increasing every year due to the greater acceptance of this method of dealing with offenders by the courts and by communities generally. It was the testimony of many officers at these meetings that whereas the number of cases handled by their respective offices has increased very greatly, the financial support and the number of probation officers to handle the increased work has not kept pace.

Emphasis at the meetings was placed upon discriminating case study and scientific investigation. Mr. H. R. Ennis, former President of the Board of Public Welfare of Kansas City, gave an illuminating address on the problem of drug addicts. It was generally agreed that the drug addict is not a case for probationary treatment, but for the special hospital.

¹These figures are less complete than formerly, the records having been destroyed in the fire of February, 1918. Earnings for October, November, December, 1917, and for January, 1918, are not included.

—A. W. Butler, Secy., Charities and Correction Commission, Indianapolis, Ind.

Dr. H. H. Hart, in his report on the rural juvenile court, emphasized anew the fact that rural delinquency and neglect is as yet largely an unsolved problem. We must establish adequate courts with trained probation officers, places of temporary detention, as well as preventive agencies working throughout the rural districts.

Emphasizing the study of the individual, Mr. L. A. Halbert said: "A man's moral character consists in the response he will be able to make to ideas of right when he gets them. Delinquents have a sort of philosophy by which they justify their acts. Sometimes acts are based on the nervous system which the delinquent inherited from his parents. Moral treatment is treatment with ideas. Certain ideas are necessary to reform any man. One is that no matter how many other people are to blame he is not excused.

"There is no evidence that you are giving a man bad treatment because you make him suffer mental distress. If you can make him feel his loss of friends and respect and manhood, and couple that with the thought that he can and must regain them or at least deserve them again, you have done him a service."

Emphasis was placed upon the need of developing more uniform and higher standards in supervising persons on probation. Mr. Charles L. Chute, Secretary of the Association, presented a report of a special investigation of the various methods used throughout the country, showing great discrepancy in the methods used and the results obtained. The Association authorized the appointment of a special committee to adopt standards.

A feature of the conference was the report by Miss Evelina Belden, Special Agent of the Federal Children's Bureau, of the nation-wide study which the bureau has undertaken of courts dealing with children. This study was begun at the request and with the co-operation of the National Probation Association. The Association pledged its support and assistance to the Federal Bureau in its study of juvenile courts through its special committee on the subject.

The development of domestic relations courts and the co-ordination of their work with juvenile courts was an important subject of discussion. Affirming its position of last year the Association went on record as being in favor of the establishment of a family court to handle all matters relating to children, non-support and divorce. The following recommendations were adopted:

First—That an active educational campaign be conducted by members of this Association for the establishment of Family Courts throughout the country. This can be accomplished through the newspapers and other publications and by the aid of clubs and societies interested in social work. We believe that the necessity for these courts and their purpose should be presented to the public. Local sentiment must be created before any progress can be made.

Second—While local conditions may demand some changes in the plans for the Family Court as provided in the resolution contained in the report of 1917, we feel that the leading principles contained in the resolution should be followed and insisted upon by social workers.

Third—That the court may have a fixed, definite and certain policy governing its proceedings and work we recommend that the judges of these courts be appointed or elected for a term sufficient in length of time to afford the opportunity to develop the social service program necessary in carrying out the work for which the court is designed. The rotation of judges, such as prevails in some of our larger cities, should be discouraged so far as it applies to the Family Courts, as it has been abundantly shown in juvenile and domestic rela-

tions courts that this principle has been productive only of chaos and constant conflict in the work incident to these courts.

We further recommend the judges of these courts be selected because of their especial knowledge and information concerning social service work, as well as their legal attainments in knowledge of the law.

Fourth—That an immediate effort be made in all jurisdictions to obtain probation forces in the divorce courts, for the purpose of investigating the alleged grounds for divorce, and the home conditions and environment of the children of the parties in the divorce action, and for supervising the homes and children after the decree is granted.

Four of the sessions of the Association were conducted as joint sessions with the Division on Delinquents and the Division on Children of the National Conference of Social Work. The plan was unanimously voted a success and the Executive Committee was authorized to seek its continuance for next year.

The following officers were elected:

President, Charles W. Hoffman, Judge Court of Domestic Relations, Cincinnati, Ohio.

First Vice-President, Edwin J. Cooley, Chief Probation Officer, Magistrates' Courts, 300 Mulberry street, New York, N. Y.

Second Vice-President, Herbert C. Parsons, Secretary, Massachusetts Commission on Probation, Court House, Boston, Mass.

Third Vice-President, Miss Maude E. Miner, Member, New York State Probation Commission, 130 East 22nd street, New York City.

Secretary-Treasurer, Charles L. Chute, Secretary, State Probation Commission, 58 North Pearl street, Albany.

—Charles L. Chute, Secy., State Probation Commission, Albany, N. Y.

Shall Illinois Have a Probation Commission?—The question, Does Illinois need a Probation Commission? should be approached through the discussion of probation, its organization and operation in Illinois.

In simple language probation implies giving a misdemeanant an opportunity to pursue his livelihood in ordinary community life, under a form of supervision, after his guilt has been established by the court. Probation, in other words, offers a third possibility. It is a middle ground between imprisonment and complete liberation in the case of the man or woman guilty of an offense.

Has the most intelligent use been made of this third possibility in dealing with those pronounced delinquent, is often asked? Do those advocating, promoting and administering the probation facility have a clear idea of the possibilities and limitations of probation? Have many of us been satisfied to believe that the general idea of probation is good and helpful to the probationer simply because we have a lurking feeling that incarceration is too severe in certain cases of delinquency and complete liberation would be unsafe to the community; hence probation?

If probation is to be of value it must offer some real possibilities not found in prison life or not present in the liberation of the offender. It must be a process of treatment and not an event or incident of longer or shorter duration. A prison sentence is too often a mere incident and not a process of treatment in the character and life of the offender. The mere fact that the individual is imprisoned has too often been depended upon to bring about a change in the demeanor of the individual imprisoned. Prison administration,

too often has not proceeded as a treatment for the men and women within its walls.

Probation may be a process of real treatment provided advantage is taken of all the possibilities present. Moreover, if probation is a process of treatment, it is quite probable that all cases will not respond to it. The first principle in probation, therefore, is the selection of cases. For successful probation work it is absolutely necessary that there be a very careful and intelligent selection of the men, women, boys and girls who give promise of responding to this particular plan. This selection is of first importance. In certain cases the same elements in society which constituted the environment of the individual who committed an offense, if properly applied to the individual, will produce a normal condition, while in other cases it may be impossible to improve the individual if he remains in the same environment in which he had his downfall.

Every act, social or non-social, is committed because of one or two fundamental sources of influence: First, inherent elements within the individual; and, second, environmental circumstances and influences which come in direct contact with the individual. We immediately think of an individual as possessing certain inherent elements which have an influence upon his impulses and desires, such as mentality, moral trend and development, physical condition, temperamental qualities, etc. We also readily think of certain environmental elements—such as early training, companionship, education, family conditions, mode of livelihood, the general moral atmosphere, economic pressure, and many very definite extenuating circumstances which might extend into indefinite numbers. These are the elements and forces within and surrounding the life of an offender, an accurate knowledge of which must be had and underlie intelligent use of probation. I wonder under the present system of probation in the United States and in Illinois if these elements are given full and proper consideration in connection with the selection of cases to be placed on probation.

Certain offenses, for example, in themselves give obvious evidence that probation is desirable. In other words, the offense itself, to one experienced in the use and results of probation, would indicate immediately, a probationary treatment. For example, the offense of non-support is obviously an offense that should be dealt with in general through the proper adjustment of the individual in community life. Non-support is a result of non-work and non-productiveness. Incarceration in prison, as yet at least, is absolutely unable to supply this failure on the part of the man to support his family. A helpful readjustment of the man in economic life, with close supervision and earnest encouragement, might easily transform the former non-productive member into a productive member of society. Probation would furnish this process of treatment. Again, larceny under economic oppression is an indication that probation might be successful. Relieve the economic pressure and the extenuating circumstances causing the offender to steal will at once enable him to pass the temptation of theft. Probation is a source through which to accomplish this.

Probation therefore to be successful must begin far back of the formal pronouncement of sentence and the formal application of probation.

Following the selection of cases based upon a study of the offense itself and a knowledge of the elements involved in the action of the individual, comes, logically, the treatment or administration of probation. Probation officers are

physicians and probationers the patients. The probation officer should give as attentive consideration to his probationer as a physician does to his patient. The selection of cases for probation may be compared to the diagnosis of a case of illness. A successful physician after diagnosing his case decides whether or not hospital treatment is necessary, or that the patient may return to his home and follow certain prescribed treatment. Just so a judge and probation officer may decide after diagnosis that the case needs intensive institutional treatment such as found in a prison or reformatory, or the offender may return home and follow certain prescribed probationary requirements. The successful physician does not dismiss his case after the patient is advised to return home and follow treatment. The physician is attentive in his follow-up work. Just so should the probation officer be attentive to the follow-up work and progress of his probationer.

The probation officer must be able and permitted to apply all his resources and those of the community to each probationary case. The probation officer must be able to:

First—Closely and accurately inform himself of the progress of his probationer.

Second—To know that the probationer's essential relationships to his family and society are satisfactory.

Third—To be able to deal promptly and adequately with any unsatisfactory probationary condition.

Fourth—The probation officer must have time and opportunity to give much thought to the many and varied needs of his many and varied probationers.

Fifth—He must have the opportunity to know thoroughly, analyze and determine the usefulness of all the resources that might be applied to his cases of probationers.

All this emphasizes the importance of a well-organized probation system. It brings us to the point of saying that possibly probation as a system is unwise and untimely unless the local unit in which it is used is able to provide a system that will make possible the operation of all the elements heretofore indicated. Probation officers must be capable and specially equipped for their delicate duties; it must be made possible that the number of cases assigned to each officer is kept low enough so that effective work may be done in each case; the qualifications and duties of the probation officers should be placed on such a high plane that men and women of preferred caliber will become interested and prepare themselves to assume the duties of this work. Unless this can be done may not probation as a system be unwise?

What has all of this to do with the subject—should Illinois have a probation commission? It is simply to stimulate us to ask the question—what has been the experience of Illinois to date in the development of the probation system? It is also intended to stimulate us in the thought that successful probation for an entire state is impossible without uniformity and high-grade standards which may be applied in local units of jurisdiction.

The present Illinois system provides:

First—That the County shall be the unit of probation.

Second—That probation may be extended to adults and juveniles.

Third—That probation is permissive, not mandatory.

Fourth—In dealing with cases, legal restrictions and lines are drawn as to the types and degrees of delinquency that may be placed on probation.

Fifth—Each locality or unit of jurisdiction is left to establish its own policy and requirements in connection with the administration of probation, with the result that there is no uniformity or assurance of high-grade standards throughout the state.

The development of a system under the foregoing condition easily permits, a lack of uniformity and quality of standards established in the various localities; no assurance of the most intelligent selection of cases for probation; no assurance that the most successful methods will be applied to certain types of cases; no opportunity of comparing experiences in one locality with another to promote efficiency and helpfulness; no provision or encouragement for the improvement or extension of the system; no strong incentive for the development of probation in undeveloped localities. It probably should not be contended that the county unit is not the proper jurisdiction in which to administer probation. It probably is the most desirable unit. The state, however, it seems to me, has a definite relationship to probation. While it probably is undesirable to place in the hands of the state as a unit the administration of probation to cover local communities, the state should have some definite conscience and relationship to the system as a whole. Otherwise, there is just such a development as has occurred in Illinois—a sporadic or spotted development. At the present moment there are probably not more than 35 of the 102 counties that have appointed probation officers for adults, to say nothing of the standards that may be developed in the 35 counties that may have probation officers operating. It is deplorable that a system which is considered good has not been extended to two-thirds of the communities of Illinois. It is also true that in spite of the reasonableness of probation for juvenile offenders, and it seems to me probation should be extended to every juvenile offender at some time in his career of delinquency, in spite of this great necessity 45 of the counties of Illinois at this moment do not have the services of a probation officer for juveniles.

It may be reasonable to conclude that in view of the many years during which probation has been a possibility in Illinois that the poor showing on the side of standardization, extension and improvement of the system justifies a further effort from some source. Might not that source be the state? Is it not time for the state through some avenue of its administrative organization to exercise a certain supervisory and advisory authority over the system of probation? If the state established a department, whether it be known as a probation commission or otherwise, to standardize, extend, improve and promote probation, great strides of beneficial service to probationers throughout the 102 counties of Illinois would occur. Such a central effort on the part of the state could interpret for the various undeveloped communities their needs and encourage them to develop service to meet these needs along the line of probation. Such a department would be recognized by a state legislative body as authority for legislation to improve and extend the work of probation throughout the state. Local communities, judges, probation officers, and others, could call upon such a state department for surveys, investigations, and indeed actual probation work for a short time while the local community might be getting under way to provide its own probation service. It seems therefore wise at this time to advocate definitely that the State of Illinois, through some avenue of its administrative organization, establish a service looking toward the standardization, extension and more efficient local administration of probation service.—(From an address by W. S. Reynolds, Supt. of the Illinois Children's Home and Aid Society, before

the Illinois Branch of the Institute of Criminal law and Criminology, Chicago, June 1, 1918.)

Louisiana Convicts Lose Stripes for Neat Uniform.—Thanks to the enterprise of Henry Fuqua, superintendent of the Louisiana Penitentiary, the ugly, depressing and often degrading "convict stripes," the repellant uniforms with broad black bands running laterally, have been abandoned and the massive, towering, and gloomy "walls" at Baton Rouge, with their catacomb-like cells, void of light and ventilation, sweating dampness and chill, have been torn down.

The convicts now wear a neat uniform, made of a good grade of striped bed ticking, sufficiently distinctive to identify them as convicts and not sufficiently conspicuous to challenge general attention wherever and whenever they appear for work. They are now received at a neat, well-arranged "receiving station" about 2½ miles from the center of Baton Rouge. The first impression of a "fresh fish" at the "walls" in the old days was enough to give melancholia to a cast-iron statue of Mirth. The first impression of a "fresh fish" when he leaves the motor van that takes him to the new station is one of cleanliness, order, discipline. It was impossible to make the old "walls" look clean, no matter how hard the captain in charge drove the men at their jobs of washing and whitewashing. The place was unsightly and it required strenuous work to keep it from being insanitary.

TWO CONSPICUOUS REFORMS

These two are the most conspicuous of Mr. Fuqua's reforms, in which he has improved on the good work of the other managers who preceded him. Former Governor Heard doubled the size of the cells at the walls by cutting out alternate walls, and effected other desirable changes within the means of the Board of Control. The first thing the late Colonel C. Harrison Parker did when he became president of the Board of Control for the second time in 1912, was to order army socks for the prisoners. Colonel Parker, after long opposition to a parole system, consented to it in 1914 and aided in its adoption. The present parole law, adopted since Mr. Fuqua became manager, does not allow for the parole of life termers, but it more liberal than its predecessors in other details. One of the less obvious but highly important reforms established by Mr. Fuqua is the extension of the "trusty system" to jobs as guards. The guards wear no penitentiary uniforms. They are armed. They get no salaries and that saves the management a large sum annually.

This innovation follows the success of the "trusty guard" system in Mississippi and the indications up to the present are that it will be so successful in Louisiana that it will never be abandoned. The establishment of it required considerable backbone, for the pressure on Mr. Fuqua to retain the old system of "all hired guards" by friends of the same was doubtless maintained for some time after he indicated he would make the change.

The new buildings at the receiving station are made of stone and brick from the old walls and steel and iron bought for the purpose. Most of the work was done by convicts, but it was necessary to employ masons and metal workers.—E. E. Moise, in the *New Orleans Item*, July 7, 1918.

REVIEWS AND CRITICISMS

PSYCHO-MOTOR NORMS FOR PRACTICAL DIAGNOSIS: A STUDY OF THE SEGUIN FORM-BOARD, BASED ON THE RECORDS OF 4,072 NORMAL AND ABNORMAL BOYS AND GIRLS, WITH YEARLY AND HALF-YEARLY NORMS. By J. E. Wallace Wallin. *Psychological Monographs*, vol. xxii, No. 2. August, 1916. Whole No. 97. Pp. 102. \$1.00.

The idea of this study is indicated by the title. Dr. Wallin applied the Sequin form-board, as modified by Norsworthy and by Goddard to 446 clinic cases observed by him at Pittsburgh and St. Louis to 1,429 school children at Pittsburgh and to 308 epileptics. He has also incorporated in some of his tables data from Sylvester's study of 1,588 children and from Goddard's study of 250 children.

Each child made three trials, in each of which he was urged to do his best. His time was taken with a stop watch from the touching of the first block to the correct placing of the last one; also, a record was made of every false move made, though the study deals practically entirely with the time scores.

The original data are given in very extensive form in a series of tables comprising the final (seventh) chapter of the monograph. Chapter I explains the purpose and method of investigation. Wallin regards the form-board as a most useful device, as "a test of form perception, movement and intelligence—that is, of psycho-motor development." Intelligence, he says, is measured because the test "requires a rapid adjustment to a novel and complicated situation," but in the next paragraph goes on to say, "we need comprehensive scales of motor capacity no less than of intellectual development," which sounds as if the form-board was not much concerned with intellectual development.

In any event, he says rightly that tests are of little value diagnostically unless fortified with reliable age norms and unless the dependence of these norms on other factors, like sex, mental capacity, etc., is also known. The remaining chapters deal with these dependencies.

Chapter II deals with the dependence on age. Speed with the form-board increases with chronological and with mental age, more rapidly in the earlier years, when semi-yearly norms are feasible, more slowly in the later years (after 12), when bi-yearly norms are enough, and at least to 17, though with seeming interruptions at the ages 8 and 13. One rather striking fact is that the averages for normal reported by Wallin are almost invariably faster than those reported by Sylvester or by Goddard—to take an extreme instance, at 4 years Sylvester gives about 46 seconds, Goddard about 39 seconds, Wallin about 29 seconds as standard performance. The discrepancies amount to roughly 1.5 years in age assignments—enough to interfere with clinical inferences, it would seem. Wallin thinks the difference is due to the circumstance that his cases averaged higher in intelligence and were incited more to do their best at every trial. Since Sylvester's and

Goddard's norms are reprinted here, the user of the form-board can take his choice.

Chapter III deals with the dependence on intelligence. The main conclusions are: Bright surpass average and average surpass dull children; children of the same mental age, but differing chronological age differ little in psycho-motor efficiency (the factor of chronological age neutralizes the factor of intelligence); brighter children show their superiority more in the first or second than in the third trial (probably because of making a more rapid initial adjustment).

Chapter IV deals with sex differences. Boys are slightly superior to girls (average about 1.3 seconds), though this difference is lessened in the subnormal. The data are insufficient to show which sex is relatively the more variable. Tentatively, it may be inferred that subnormal males are more dangerous than subnormal females, but that the abler males surpass the abler females. The male superiority is greater in the first or the second than in the third trial, hence, Wallin says, it is desirable to make more than one trial, though the logic is not clear to the reviewer. That the sexes both seem to reach resting plateaus at the same years, 8 and 13, is hard to reconcile with other phenomena of sex growth.

Chapter V deals with the effect of repetition. There is a marked gain in speed from the first to the second and a less gain from the second to the third trial. The gain is greater with subnormal children because their first trial is so slow. Here, again, Wallin argues that the best score to use is the shortest one (almost always the third), though it would seem to me obvious from his own figures that subnormality is best brought out in the first trial. Practice curves, in any case, differ with degree of mentality.

Chapter VI deals with variability of form-board performance, which is considerably greater for subnormal than for normal children, and which decreases from trial to trial and with increasing chronological or mental age.

This monograph represents a deal of tedious work and its tabular summary will be welcomed by other investigators. It remains to be seen how much use can be made of it for the "practical diagnosis" specified in its title.

Carnegie Institute of Technology.

G. M. WHIPPLE.

THE PHILOSOPHY OF CONDUCT. By *S. A. Martin*. Boston, Richard G. Badger, 1916. Pp. 238. \$1.50.

"Men change and times change with them, but the principles of moral truth are older than the earth, and shall abide when the elements shall melt with fervent heat, and the heavens shall be, as an outworn garment, folded up and laid aside, still the laws of nature, moral laws as well as mathematical or physical, shall abide, steadfast and unchanged" (p. 20). That moral truth is immutable and eternal, fixed in the constitution of things, ready-made and awaiting discovery by the moral sense of man—such is the ethical position of Professor Martin. Although he may claim descent from a long and honorable

ancestry, this teacher will find few relatives among contemporary writers on ethics. For some reason, perhaps because his first and foremost purpose was to write a text-book, Professor Martin does not undertake to defend a type of thought which would generally, in this day and age, be considered obsolete. There is a certain charm, it must be said, in the very positiveness with which these views are set forth, and, ethically considered, it is good to hear the voice of Cudworth once more. As an introductory text, the little book has much to recommend it, but it is not likely to be taken up by university teachers, because of its remoteness from modern discussions of the problems of conduct. The more conservative denominational colleges are likely to find in it "safe and sane" views, in keeping with orthodox Christian ethics.

Northwestern University.

D. T. HOWARD.

THE PROGRESS OF CONTINENTAL LAW IN THE NINETEENTH CENTURY.
By *Various Authors*. The Continental Legal History Series,
XI. Boston: Little, Brown, and Company, 1918. Pp.
xlix, 558.

This is the last notable volume in a notable series. The editorial committee of the series consists of Professors Drake, Freund, Lorenzen, Mikell, and Wigmore (chairman), acting for the Association of American Law Schools. The legal profession owes this learned committee and the Association under which it has acted, a debt of gratitude which probably can never be suitably acknowledged. A handful of men of the type represented by the editorial committee, by reason of command of modern foreign languages and access to foreign legal literatures, was already in at least constructive possession of the historical learning which this great series has assembled; but for most of us, until these translations were published, these materials were intellectually as remote as the great crested grebe. Selfishly, the members of the editorial committee would have profited by reserving this learning to themselves after the fashion of the monopoly enjoyed by the pontifices of early Roman law. The publication of these eleven volumes may therefore be regarded like the *ius Flavianum* or the *ius Aelianum* as "a great popular act," and, more than that, a fine expression of idealism.

It would be interesting to know, if the fact were knowable, how often the generation here and to come will capitalize this investment of knowledge. That it will prove one of the foundations of our legal science for years, of that there may be no doubt. Some of the intermediate volumes of the series have not yet been issued, but the value of the enterprise is so apparent that it may be hoped the Association of American Law Schools will decide to continue its history committee, and that from time to time additions shall be made to the series as its program now stands. In that way alone will it be possible for American legal science to keep abreast of the development of historical learning in foreign countries. Perhaps the second series should be given a broader scope including comparative law in all countries, not limiting

the field to the continental group. But in speaking in terms of admiration and enthusiasm of the initiative and labors of the editorial committee, it would be an act of injustice not to point out the indispensable part taken by the translators in the production of these volumes. The editors properly have made due acknowledgment of their arduous services. Without the learning, skill, and labor of the translators, the idea of such a series would have been as the General Preface puts it, "a fruitless dream."

The present volume (the last of the series) like the first is a symposium. The reader will hardly need to be told that under the title of the book much may be learned from such writers as Alvarez, Baldwin, Charmont, Georg Cohn, Duguit, Gaudemet, Meili, Nippold, Perich, Picard, Reinsch, Ripert, Rocco, Vanni, and Wigmore. Of the countries represented by this array of scholars are Belgium, Chile, France, Italy, Serbia, Switzerland, and the United States. The translators are Layton B. Register of the Philadelphia bar and Ernest Bruncken of Washington, whose abilities are already sufficiently attested in other translations which they have made. The failure to include among the fifteen authors entered and the six countries drawn upon, even a single writer from Austria or Germany arrests one's attention. True enough, there is a Swiss professor who was at one time at Heidelberg, and there is an essay by another Swiss scholar taken from a German publication. From a French authority (Gaudemet) we read of the "bürgerliches Gesetzbuch" as a "masterpiece of method and science . . . the superb epitome of all the results which German text-writers obtained in the 1800s in the field of the pandects." From an Italian (Rocco) we learn of "German leadership in the field of commercial law during the second half of the 1800s." From other writers we get suggestions of important developments in German legal science, of influence on surrounding countries, or of activities important because of their relation to the widespread movement toward international unification of law. Did the writers of Austria and Germany have nothing to say on their own account about these developments? Or is this silence a literary phenomenon of the war? Neither. As to the question of silence we need not go beyond the present volume to discover that Gierke, Menger, and Sohm (not to mention a score of other writers) had discussed the drafts of the civil code of 1896, the formulation of which began some twenty years earlier. On the second question the editorial committee no doubt found what seemed to the committee a better perspective and better discussions of that part of continental legal history among the writings of scholars in other countries. Whether one agrees with the solution or not (and in other times there would be a rebuttable presumption against it) there is sufficient to put the reader on inquiry. However, the fact remains, whether of any importance or not, that neither the background nor the juristic results of the civil code of 1896 receive anything more than subordinate consideration in this volume. But whatever may be thought to be lacking on these points will be found on an extensive scale in another volume of the same series, which was published prac-

tically at the same time as the work under review—Huebner's "History of Germanic Private Law."

But if this compilation shows a predominance of Latin, and, especially, French writing (of which the learned editor is the chief patron in this country) the volume has thereby gained in clarity what it may perhaps have lost in profundity and microscopic detail. The moon shines in France—that we know since we have all read apostrophes to "clair de lune"—but there is little moonshine in French scholarship or French legal writing. The French language is, as Fouillée has said, "frank and rectilinear." The ideas presented in this volume by the French group strike out straight from the shoulder, and the reader is quickly informed precisely as to what is under discussion and how the author feels about it. Fouillée in his book ("Modern Idea of Law") has attempted an elaborate explanation of the quality of French writing, but we believe he neglects an important national trait which accounts for the principal part of it—outspoken intellectual and moral courage.

This volume is in three parts which discuss (1) the readjustment of law to changed social conditions, (2) codification, and (3) international uniformity of law. Its fourteen chapters are so arranged in the order in which these topics are discussed, as to make a coherent story of the changes in the law of the principal countries of continental Europe since the French Revolution. There is an informative preface by the editor (Professor Wigmore), and there are sympathetic introductions by Professor Borchard and Sir Frederick Pollock. The dominant chord is the change (and that is doubtless what is meant by "progress") from the individualist standpoint of Roman law and the Code Napoléon to the social régime, as shown in the chapters of Alvarez, Charmont, and Duguit. This is followed by what the harmonists would call a suspension dealing with codification treated by Alvarez, Perich, Gaudemet, Vanni, and Rocco. The authentic cadence, if we may so term it, is an explanation of the movement for the international assimilation of law, by Cohn, Ripert, Reinsch, Meili, Baldwin, Picard, Nippold, and Wigmore.

From what has been said by way of description, it will not be difficult to believe that out of this university of discussion by eminent thinkers in legal science, one may acquire a liberal fund of authoritative information not to be gathered in any other English book on what has been the legal situation on the European continent for a century or more, especially in the fields of private civil law, commercial law, and private international law. What is of chief interest for readers of this JOURNAL—criminal law—does not fall within the scope of this volume, that subject being treated exhaustively in another volume by von Bar in the same series. Nearly all the chapters well deserve special consideration in any review of the volume, but since so extensive an analysis would exceed at once the competence of the present reviewer in so wide a domain, and the space available, we must content ourselves with an examination of a single chapter—that of Duguit.

Duguit is already well known to American readers of legal litera-

ture through other translations of his writings (in *Modern Legal Philosophy Series*, Vol. VII, *Illinois Law Review*, and other publications) as the greatest iconoclast of legal ideas who has appeared in this generation. Although Bentham had been admitted as a bencher of Lincoln's Inn, he withdrew from the legal edifice before he commenced to hurl unfriendly missiles at legal institutions to the discomfiture of many persons of conservative turn of mind, within. But Duguit in his assault upon the idols of the law stands in the center of the temple like a scourging Nazarene. He is a professor of law at Bordeaux; he is an authority on public law; he has written numerous law books; he is thoroughly informed on all phases of importance in private law; and, lastly, he is a keen analyst of fundamental legal notions. Like Bentham, he is chiefly occupied in uprooting beliefs long established. Of course, we are all now liberal enough to tolerate this sort of activity. We not only tolerate it, we welcome it. We have seen the three authorities of the ancient world refuted. Our profoundest beliefs have been shown more than once to be illusions. Even the laws of nature are subject to contingency. Each day is a creation *ex nihilo*. The bouleversement is the thing. When Duguit diverts the course of the river, the Augean stables had not been cleaned for thirty years, no not for twenty centuries!

The first awakening from a peaceful slumber of orthodox dreams came when Duguit denied the personality and also the sovereignty of the state. We rubbed our eyes and asked, can this really be true? We were still asking the same question in a half-awake bewilderment. Before we can gain our composure, Duguit proceeds with a series of bomb-like affirmations—affirmations fortified, too, by keen upper-cut reasoning—which cast a doubt on the validity of an entire series of legal ideas which have done service since the ancient days of Q. Mucius Scaevola. That these allegations of iconoclasm, havoc, and repudiation may not appear too much in the spirit of rhapsody, let the author speak for himself.

"Personally I admit of no dogma in any line of belief whatsoever." (p. 66.)

"It can truthfully be said that such a metaphysical conception [of subjective rights] cannot be maintained in an age of realism and positivism such as our own." (p. 70.)

"The individual has no rights; neither has a group of individuals." (p. 73.)

"Property is not a right; it is a social function." (p. 74.)

"Every metaphysical conception must be banished from the science of law as they have been banished from the other sciences; this is the price of the law's progress." (p. 91.)

"The entire theory [of artificial personality] explains nothing. A group either has no will distinct from its members, and in that case it cannot be a bearer or subject of right, and the law, powerful though it is, cannot produce what is not existent; or a group has in fact a will distinct from that of its members, and in that case, it is naturally, of itself, a sub-

ject of right and the intervention of the legislature or the executive is unnecessary." (p. 93.) . . . "These controversies are entertaining intellectual pursuits—nothing more. They are useless for the excellent reason that the problem . . . does not exist. Are groups, associations, corporations, funds, etc., by nature subjects of right or are they not? I do not know, and the question does not interest me." (p. 95.)

"Whatever may be the case, I maintain . . . that as modern law becomes socialized, it is not the inward will but the declared will that is protected because that alone is an act affecting society." (p. 104.)

"I recognize quite well that often, indeed generally, in practice [a] juridical state of facts represents a relation between two persons, one of whom is bound to perform a positive or negative act, and the other of whom may require such performance. But in contemporary civilization with its social tendencies, this is not essential." (p. 111.)

"As the autonomy of the individual is disappearing so the sovereignty of the state is disappearing. As subjective right in the individual exemplified in its most intense form, dominium, is disappearing, so the subjective right in the state, the imperium, is disappearing. There is no longer any reason why one source of law should not be those rules of conduct established by a compact between groups of society and sanctioned by the material forces of government." (p. 124.)

Duguit stands for realism raised to the "nth" power. These bony fragments excised from a living torso may not be adequate to exhibit fully his position, and certainly they can not do it entire justice, yet enough is disclosed as a basis of discussion.

Professor Keedy in a thoughtful article in *Pennsylvania Law Review* some months ago undertook to show that each age is dominated by an organic unity of ideas. The present epoch clearly proves his point in presenting such a unity or rather a congeries of unities each struggling with the others for ascendancy. The realism of M. Duguit has its affines with such unrelated things as intuitionism in philosophy, post-impressionism in painting, vers libre in poetry, and modernism in religion. It may appear somewhat venturesome to group a jurist like Duguit with Richard Strauss, Cézanne, or Rimbaud, and yet they all in their different fields of expression show the eternal conflict between the rational and the factual, the struggle between form and matter, the opposition of classicism and romanticism.

Roman law was a system conspicuous for its elegance of form—at least it became such when it had been worked up and polished in the hands of specialists. Its underlying concepts have traversed the world. Even the Common Law however free it may be of Roman doctrine is thoroughly dominated by the Roman legal technic of underlying legal conceptions. M. Duguit would abolish this conceptional technic root and branch, and deal with the facts of life solely from the standpoint of a purpose crystallized in the idea of solidarity or social interdependence as he prefers to call it. But is not M. Duguit in this realistic program attempting an impossible feat of prestidigitation? Is he not trying in effect to pump water without pipes? We can have an administration of justice without rules as Salmond teaches, but can we have a system of law without rules? As we understand the term law

—the ordinary sense—we think not. Some years ago an American legal scholar, Professor Bingham, vigorously defended the thesis that the law does not consist of *rules*, but of *events*. The present reviewer at that time attempted to argue the point in favor of the traditional belief, but the controversy ended in the usual way—neither writer able to get the point of the other. That incident and hundreds of others which have come under our observation makes us despair of the utility of a book review which does not accept an author as a whole, or of any other controversial discussion. As has been said in another connection, such writing is interesting to those who engage in it, and it tires no one but the reader. A proof of this misery lies under our hand. The first philosophical journal selected at random contains this sentence under the title of Discussion: "Professor X's reply to my note so far misses the point I have tried to make that it seems worth while, etc." How many thousands of times has this familiar complaint not been registered in print! We hardly have the courage to go on. . . . Reference to the other debate is relevant in this that M. Duguit has completed the labor of demolition of his American colleague without either being aware of the constructive-destructive efforts of the other. Professor Bingham has annihilated rules of law and M. Duguit has abolished legal concepts. With this unhappy situation confronting us, there is manifestly nothing left for lawyers to do but to become sociologists, or perhaps statisticians of social events.

Professor Duguit's quarrel is not with Michoud, Planiol, or Saleilles, or yet with Gierke, Jellinek, or Bekker, but rather with legal science itself. We are constrained to believe that the major part of M. Duguit's argument rests on an analytical misconception. In tracing the movement toward objectivism, or rather as seems more correct to say, factualism, he thinks he finds a progressive cutting down of legal rights (literally translated "subjective right" which is a German usage likely to produce an erroneous connotation in English). He looks forward to a time when the law will become thoroughly socialized, and proleptically discards, as was shown, the idea of legal right, as a metaphysical abstraction. In this he follows Comte who however eminent he may have been in other fields of thought could hardly be rated as a jurist or what requires much less knowledge of law, a legal philosopher. It is customary with the positivists to employ the term "metaphysical" as an epithet. It has otherwise no significance. The point of view taken is aided verbally by the unfortunate legal idiom "abuse of rights," or as the translators and editors have preferred to put it "misuse of rights." Now a right cannot be "abused" or "misused." It cannot even be used except in a receptive sense. No jurist is more aware of this than M. Duguit himself as a quotation above from his chapter clearly shows.

We do not contend that Professor Duguit has mistaken the legal phenomena which he describes as facts, but we think his interpretation of them has led to erroneous conclusions. No doubt something has been cut down in the last hundred years, and especially in the last twenty years, and yet more especially in the last four years—but not rights—not those metaphysical abstractions, if they must be so de-

nominated. What has progressively been cut down is *liberty* and not right. We insist that Professor Duguit has confused these terms, and that such confusion is disastrous. We approach here a field of analytical discussion much too extensive for the present purpose, but we believe an examination of the ground will disclose that legal rights far from having been eliminated have been little affected by the social movement, and that the jurisprudential result has been a circumscribing of the non juridical idea of liberty in favor of a larger group of legal rights. In other words, the effect has been an increase in the range and bulk of legal rights instead of their gradual absorption by the notion of solidarity. The changes in social régime do not require the abolition of Roman legal concepts. Indeed, as long as there is a reign of law and not pure discretion as in the family life of early law, it is impossible to conceive that the idea of concrete rights can be dispensed with. Even in ancient Japanese law where the nearest equivalent of right meant "share" the basic idea was still implicit.

It cannot be denied, however, that many Roman legal concepts have been overhauled. There are two classes of such concepts—formal and normative.

An example of a formal legal concept is the notion that every right must have a subject, a bearer, an owner. M. Duguit, as we have seen, denies this for the case of associations whether private or public. In the ordinary case which arises it is not technically important, but when the legal character of the bearer of the right is in question, there is no escape from the problem—some kind of technic must be resorted to if we are to have a coherent science of law, and it will not do, at least it will not suffice in jurisprudence, to decide in a teleological fashion without regard to other considerations. We do not emphasize "elegantia" as an end in itself, but we do insist on intelligibility and a reasonable amount of coherence. It will not do therefore to say that such problems are of no interest to a modern jurist. This does not require that we go to the extreme which in certain recurring epochs have been witnessed in the administration of justice, where the realities of life have been stretched on a bed of Procrustean form. Our criticisms here of Professor Duguit, and it is submitted with the deep respect and homage due to one of his brilliant talents, is that he is an extremist in these matters. We would for our own part prefer a middle ground between a rigid scholasticism and an unbridled teleology. The personality of a corporation, is, it is true, a fiction, but it is no more of a fiction, it is submitted, than the "persona" attributed by the law to a human being; nor is the fiction more difficult, or less necessary.

The other kind of legal concepts, the normative, are only relatively fundamental. An example is the Roman law principle of no liability without "culpa" which governed the administration of justice in the courts pretty consistently for two thousand years. This principle is breaking down in many varieties of legal relations; but this breakdown is not annihilating legal ideas, it is not destroying rights, and it is not abolishing jural relations. All that progress means here is a change of principle from the outworn and now unworkable idea of

responsibility full of psychological absurdities and economic inequalities to that of accountability. Rights and jural relations still remain and they would continue to exist even though the whole field of tort law were put on a causation basis of liability.

It is interesting and hopeful to find that from the practical side, the United States is not as far behind in social legislation as might have been supposed. An alarm has sometimes been sounded against contamination by foreign legal ideas. An inspection of this volume, having in mind our own legislation, will show that we are already considerably contaminated, and it is not unlikely that we shall become more contaminated with social ideas with the passage of years. Nor is the risk of contamination altogether unilateral in these matters since it appears that some American ideas (e.g. the homestead system, the probation system) have spread to foreign countries. The problems of this, a transitional epoch, have not commonly been discussed by our own jurists with the same broad outlook as by the jurists of France and Italy, but since these problems are part of a world-movement and can not be put aside in an attitude of conservatism or even a fear of contamination, it may be anticipated that our jurists with the inspiration of this and other similar volumes sponsored by the Association of American Law Schools, will relate more often than has heretofore been the case the daily problems of the law not simply, as is customary, to a traditional, historical, and dogmatic technic, but to the larger movements which are everywhere overtaking legal systems. In other words, our legal problems must be considered henceforth not alone in the light of a fixed system dominated by the economic requirements of an age which is behind us, but in view of a new social regimentation, whether we like it or not, which is too real to be ignored. The mission of the lawyer in this era is more important than it has ever been before. Enlightenment now is necessary in order that legal science may not be obliterated in the surge of coming events. Without this enlightenment, the enlightenment of such a volume as this one, the lawyer truly must be as Cicero has it, a chanter of formulas (cantor formularum) and a fowler of technicalities (auceps syllabarum).

Northwestern University.

ALBERT KOCOUREK.

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History of Germanic Private Law, By *Rudolf Huebner*. The Continental Legal History Series, Volume IV. Translated by Frances S. Philbrick. Boston: Little, Brown & Co., 1918. \$4.50.

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Journal of the American Institute of Criminal Law and Criminology

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EDITORIALS

FESTIVAL PUBLICATION IN HONOR OF JOHN H. WIGMORE

The ILLINOIS LAW REVIEW in November published its Nos. 3 to 4 of Volume XIII under one cover in honor of the 25th year of John H. Wigmore's service as Professor of Law in Northwestern University. The volume contains contributions from the world's most eminent jurists. In Part 1, under the title "Theory and Philosophy of Law" are contributions by Sir Frederick Pollock, W. Jethrow Brown, and Alejandro Alvarez. In Part 2, entitled "Comparative Law" are contributions by J. W. Brodie-Innes, C. Van Vollenhoven, and Frederick P. Walton. Two chapters on Criminology appear in Part 3, one by Chung-Hui Wang and Ugo Conti. In Part 4, on Legal Education, is an article by Chief Justice John Bradley Winslow. Professor Ernst Freund contributes to Part 5, on Legislation. In Part 6, entitled "Analytical Jurisprudence" are chapters by Henry Goudy, Rene Demogue and Henry T. Terry.

Other contributions have appeared in the LAW REVIEW Nos. 5 to 6, December, 1918, and January, 1919, in two parts, 7 and 8. Part 7 contains articles on International Law, by Th. Baty and Ernest G. Lorenzen. In Part 8, entitled Public Law, are contributions by William G. Hastings and John M. Zane, on the Theory of Public Law and by H. J. Randall and Angus J. McGillivray on Constitutional Law.

These numbers will ultimately be bound together in a single volume.

ROBERT H. GAULT.

PSYCHIATRIC CLINICS FOR THE PREVENTION OF DELINQUENCY

The Board of Charities of New York State is publishing a most useful series of bulletins through its Bureau of Analysis and Investigation. One of the most recent of these is *Eugenics and Social Welfare Bulletin No. 13*, by Dr. Chester Lee Carlisle, Superintendent of the Division of Mental Defect and Delinquency of the State Board of Charities, and Director of the Bureau of Analysis and Investigation. The title of this bulletin is "The Problem of the Mental Defective and Delinquent."

Under the sub-topic "Clinics" Dr. Carlisle makes some suggestions that appeal to the writer as being of great constructive value. Numerous surveys have appeared to demonstrate the large percentage of feeble mindedness and morosity in the general population. Over and above these, no doubt, there is a considerable proportion of the population who are suffering from mental and nervous instability. This, says Dr. Carlisle, need not alarm us too greatly. Obviously a large proportion of this group will never see institutional walls and should never see them. A great number of them can, no doubt, be safely tolerated in the communities in which they have grown up, provided only that the state will supply the needful machinery for giving them advice, education, and other treatment suitable to their several cases. This leads Dr. Carlisle to make the suggestion that has again and again been made in the JOURNAL in different forms, that the state should create clinics which should be responsible for looking after the mental hygienic conditions in their several localities. No doubt it will occur to many that the people who would most need the ministration of the clinic would not go to get it. This, we believe, is incorrect. Certainly it is not true if the clinics can be manned by a personnel that is adequate to the service it is expected to perform. If the parents of children in a large city can, in the course of time, be so educated that they will take their own children to a Chief of Police to get his counsel with respect to the bringing up of the youngsters, surely they may just as readily, nay, more so, be got into an attitude favorable to patronizing the clinic. Such clinics would be something very definite in the minds of the public. They would be of service daily: First, to the potential patients who need advice and treatment in matters of mental defect and disorder; Secondly, to the public who, as the parents or friends of patients, need education and advice on topics of mental hygiene in general; Thirdly, the state and its institutions could look upon the clinic as a clearing house for the diagnosis and registration of those cases which come before it on the one hand and as a way station for those patients who have been in the institutions and who are now trying to get along in the outside world on a parole system. Such patients could be required to report to these institutions as often as necessary, as one of the conditions of parole. The clinics would be in constant touch with poor officers, social service societies, boards of health, health officers, officers of general hospitals, penal or police officials, criminal courts, domestic relations courts, children's courts, city or rural magistrates' courts, physicians, orphan asylums, federal officers and agents, state officials,

and departments of education in the matter of retarded pupils, incorrigibility, etc.

The whole enterprise would fit in nicely with the aims of modern-day criminologists as well as of those whose primary interest is in the direction of public and personal hygiene. It seems probable, furthermore, that when the scheme is examined in detail and especially after being tested, the cost of its operation would reduce that of hospitals and other such institutions as are maintained at present.

ROBERT H. GAULT.

CALIFORNIA STATE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION.

The California legislature created a state bureau of criminal identification in 1905. The bureau fulfilled all the promises made by its promoters, and furnished an inspiration for the present State Bureau of Criminal Identification and Investigation, located at Sacramento, California.

Recognizing the importance of record centralization, representatives of the California Sheriff's Association and the California Association of Chiefs of Police, met in San Francisco and drafted an act which provided for a central clearing house for all criminal and crime records.

A delegation was sent to the state capital to further the cause of the bill, and though it failed of passage many times, each legislative session found the peace officers delegation as determined as ever in their purpose to secure its adoption.

The fight attracted the attention of the California District Attorney's Association and the California Association of Identification Experts, and in the 1917 legislative session the combined forces of the peace officers convinced the legislators and Governor Stephens that the bill had merits. Thus the first battle for better police methods in California was won.

The act provides that the Governor shall appoint a Board of Managers consisting of one chief of police, one sheriff, and one district attorney, who shall serve without compensation. Absolute control and management is placed in their hands, with the exception that all employes must be selected from the eligible list, provided by the Civil Service Commission. It is made the duty of the Board of Managers to procure the records of all well known habitual criminals from wherever possible, and to furnish information concerning them

to duly authorized peace officers. Sections 8, 9 and 10 of the act, which are given below, distinguish the California bureau from all pre-existing organizations.

Section 8. "It is hereby made the duty of the sheriffs of the several counties of the State of California, the chief of police of incorporated cities therein and marshals of incorporated cities and towns therein to furnish to the said bureau, daily copies of finger-prints on standardized eight by eight inch cards, and descriptions of all such persons arrested who in the best judgment of such sheriffs, chiefs of police, or city marshals, are persons wanted for serious crimes, or are fugitives from justice, or of all such persons in whose possession at the time of arrest are found goods or property reasonably believed by such sheriffs, chiefs of police, or city marshals, to have been stolen by them; or of all such persons in whose possession are found, burglar outfits or burglar tools or burglar keys or who have in their possession high power explosives, reasonably believed to be used for unlawful purposes, or who are in possession of infernal machines, bombs, or other contrivances in whole or in part and reasonably believed by said sheriffs, chiefs of police and city marshals, to be used for unlawful purposes, or of all persons who carry concealed firearms or other deadly weapons and reasonably believed to be carried for unlawful purposes, or who have in their possession, inks, dyes, paper or other articles necessary in the making of counterfeit bank notes, or in the alteration of bank notes; or dies, molds, or other articles necessary in the making of counterfeit money, and reasonably to be used by them for such unlawful purposes. This section is by no means intended to include violators of city or county ordinances or of persons arrested for other trifling offenses. It is further made the duty of the aforesaid sheriffs, chiefs of police or city marshals, to furnish said bureau, daily reports of lost, stolen, found, pledged, or pawned property received into their respective offices

Section 9. "In order to assist in the recovery of said property and in the arrest and prosecution of criminals, it is hereby made the duty of the said Board of Managers, of said bureau, to keep a complete record of all reports filed with the said bureau, of all personal property stolen, lost, found, pledged, or pawned in any city or county of this state.

Section 10. "To provide for the installation of a proper system and file, and cause to be filed therein cards containing an outline of the method of operation employed by criminals in the commission of crime."

In all previous laws providing for identification bureaus the matter of sending records of arrests to the bureaus was optional with peace officers. In section 8 of the California law, it is made the duty of sheriffs, chiefs of police and marshals, to furnish to the bureau, daily copies of all criminal records of delinquents, and no peace officer will knowingly testify to his bad judgment by failing to send the information which should be forwarded. In addition to the classification and indexing of all finger-prints, the bureau at present, brings together in one central clearing house, all records of stolen property, pawned

articles, and all property bought by second-hand dealers throughout the entire state.

Lastly, and most important to my mind from the standpoint of crime prevention, is the provision for a "Modus Operandi" system, contained in section 10 of the act.

Before taking any steps toward the establishment of the bureau, the Board of Managers consulted identification experts in this and other countries concerning modern systems of identification of persons and property, with the result that the bureau is splendidly equipped to perform the work that the bureau was created for.

Finger-print files are maintained, in which are filed finger-print records of every criminal arrested in California, as well as finger-print records of professional criminals arrested in other states and countries.

Bertillon files contain the Bertillon descriptions of all felons arrested in California, and records of felons wanted in this and other states. Photographs and descriptions of persons wanted for crimes where no finger-print or Bertillon record is given are filed in a cabinet and segregated according to the crimes and English description of the fugitive wanted. By elaborate indices every mark, scar, mole, missing or deformed member is made useful in an anatomical file for the identification of criminals. The name and aliases of every criminal are filed in the alphabetical file according to the directory system of indexing.

Whenever it is possible to secure detailed information of the method employed by the professional criminal in plying his trade, a card containing the description of the criminal as well as his method of operation is filed. The "Findex System" is used for this purpose, and at the present writing is giving satisfaction.

An important adjunct of the bureau is the property file. Here are kept records of articles pledged or sold in pawn-shops or sold to second-hand dealers, engine number of all automobiles registered in California, and records of miscellaneous stolen property, indexed and filed according to the number and kind of article. Over a quarter of a million cards are filed in the property file annually.

Criminal history, correspondence, newspaper clippings and crime complaint files complete the record system.

The equipment also includes photographic apparatus with an up-to-date dark room and accessories.

The purpose of the bureau is to assist in the suppression of crime, by furnishing to the peace officers information leading to the appre-

hension or identification of criminals. How well the bureau succeeded in the purpose for which it was created is best illustrated by a few interesting facts gathered from the annual report. During the first year of its existence nearly 600 criminals have been identified by the bureau as previous offenders, and over \$47,000 worth of stolen property has been recovered, which would not have been located without the aid of the clearing house. During the next year even better results are predicted.

It is the opinion of the Board of Managers that the activities of the bureau should be extended. Accordingly they have recommended in their first annual report that experts in microscopy, chemical analysis and hand-writing be regularly appointed and attached to the bureau. Whenever requested by peace officials, these specialists could be sent to assist in the solution of crime problems without cost to the particular community, save expenses incident to traveling.

Rapid transportation has changed crime conditions all over the world. Professional criminals no longer confine their operations to a particular locality, but travel from one end of the country to another and from one country to another. If we hope to reduce the extent of their operations, central bureaus must be located in every state, and a national clearing house in each country. Clearing houses for criminal records are no longer an experiment; they are a necessity, as has been well demonstrated by the California bureau.

AUGUST VOLLMER.

THE TRUTH ABOUT THE PAROLE LAW IN ILLINOIS

With the so-called "crime wave," which seems to be an inevitable accompaniment of the winter season in every large city, there is coupled the periodical talk about the Parole Law as a supposed cause. One would conclude there were no more apparent causes for increased crime at this time, and that the Parole Law was operative only in the winter.

The fact that the chief causes have been pointed out many times, and that the truth about the Parole Law as a preventive of crime has been written many times, has not proven a preventive of the unfounded criticisms and biased conclusions based upon insufficient facts. Unfortunately, the average reader sees the sensational attacks and fails to read the more informed and constructive replies.

Again and again the writer has found well-meaning people astonished to learn that what they have been reading as to the results of

parole and probation does not in the least accord with the well-authenticated facts.

The statement has often been made, for example, that most crimes are committed by old offenders under parole. All the facts plainly show that the great majority of offenses are committed either by boys who have not yet served in a state penal institution, or by old offenders who have been discharged outright, or who have long since completed their parole.

It is supposed that the Parole Law is a measure of clemency, rather than a well tested method of keeping released prisoners under supervision. The facts are, that the average sentence in Illinois and elsewhere, is more than one year longer than under the old, definite sentence law.

Claims are made that the majority of paroled men violate their parole. The carefully kept records clearly show the facts to be, that about fifteen per cent of paroled men commit other offenses, while not to exceed an additional ten per cent fail to report or leave the state.

The exact figures to substantiate these statements have been published repeatedly in this JOURNAL, and by the various State Boards of Corrections and Boards of Parole. They may be found also in any library.

The best results have been obtained in such states as New York, Massachusetts, Indiana and Illinois, where the Parole Law has been in operation for twenty years or more, and where the most systematic supervision of paroled men obtains.

Figures compiled by the Illinois Division of Paroles, clearly show that under the parole system, men found guilty of burglary, larceny, and robbery, are much more severely punished under the indeterminate sentence than they were during the period when definite sentences were the rule.

The same good results are shown in Canada as in the states. Out of 11,097 prisoners released during the nineteen years of the Canadian Parole Act, ninety-four per cent at least, received great benefit, and 9,647 have successfully completed their parole, while 773 are still reporting. Of the above number, 510 men had volunteered and were sent to the front in the Canadian Army. Several have won distinction for bravery and good conduct.

Serious objection is made to paroling any, excepting first offenders. The fact is that even the old offender might better be under parole supervision than to be turned loose, as he must be at the end of his

term, without any clew to his whereabouts, or any power to return him without the expense of a further trial.

It is sometimes claimed in Chicago that that city is made a "dumping ground for criminals," as a result of the Parole Law. The facts are that many more discharged prisoners would come here from adjacent states, except that most of these states require paroles to be served in those states.

It is charged that too great leniency is shown by the Parole Board, in granting conditional release. The facts not only show that definite sentences were shorter previous to the Parole Law, but that many judges still send young men for serious offenses, either to the Reformatory on short definite sentences (clearly contrary to the intent of the law), or to the House of Correction, with no provision for after care.

Recently the chief of detectives in Chicago, was quoted in the press as stating his belief that ninety per cent of the men who had been given a special Industrial Parole in Illinois, were now in Chicago, engaged "at their old trade." The facts are that 692 of these men were sent to the Government Arsenal for war work. They are about 200 miles from Chicago, and of the whole number, precisely 57 men failed to maintain satisfactory conduct in any way. Less than 20 were charged with felonies. The remainder were accused of being intoxicated or of failing to report.

Frequently Grand Juries, at the suggestion or dictation of the State's Attorney, have recommended the repeal of the Parole Law. In each case where investigation has been made, it was found that only a small per cent of the men indicted were actually under parole. The great majority had either never been paroled, or had long since completed their parole, and would have been at large just the same if no Parole Law existed.

The repeal of the Parole Law has been discussed and demanded many times, by the few. As a matter of fact, there are parole laws in some thirty-five states, but not one has ever been repealed.

It would be much more to the point if we could have fewer critics of the Parole Law, and more publicity as to the fundamental causes of crime. These are easily found in ignorance and poverty in the home, frequently as a result of low wages; in the inefficiency of the police and the machinery of the courts; and in the political influences dominating many correctional institutions. Let these conditions be recognized and remedied, and such constructive and preventive measures as the Parole Law will be even more effective, and more fully understood by all.

F. EMORY LYON.

CRIMINAL RESPONSIBILITY OF THE INSANE AND FEEBLE MINDED

HENRY W. BALLANTINE.¹

It is the theory of some philanthropists and insanity experts that a criminal offence is always a symptom of mental disease. According to their theory only the innocent could ever be punished. If a man robs or kills, the fault is not his; he is the victim of an hereditary taint or of his unfortunate environment, to be pitied, but not to be blamed or punished. Such ultra-pacifistic condonation of all crime unfortunately prejudices many practical persons against much needed reforms, such as the discriminating use of psychological tests of mental deficiency to guide our dealings with delinquents, young and old.

In nearly every capital charge when other defences appear hopeless, insanity is put forward as a last resort. The apprehension of abuse and fabrication of the plea of insanity, like that of drunkenness, reacts on the law to make it restrict the defence where theoretical justice would demand it. A majority of jurisdictions thus refuse to recognize uncontrollable impulse as a defence, unless the defendant was unable to distinguish right from wrong.² In 1911 a committee of the New York Bar Association recommended the statutory abolition of the defence of insanity, and drafted a proposal that insanity at the time of the act, regardless of the condition at the time of the trial, should be ground for confinement in an asylum for the criminal insane for a definite period.³

In the State of Washington in 1909 a statute was enacted, that it should be no defence in criminal cases that the defendant was unable by reason of his insanity, idiocy or imbecility, to comprehend the nature and quality of the act committed, or to understand that it was wrong or that he was afflicted with a morbid propensity to commit the act. This statute was held unconstitutional, because it takes from the jury the question of criminal intent, thereby violating the "due

¹Dean of the College of Law, University of Illinois (Urbana), an address delivered at the meeting of the Illinois State's Attorneys' Association.

²*Smith v. Mississippi*, 95 Miss. 786, 49 So. 945, 27 L. R. A. (N. S.) 1461, note; Ann. Cas. 1912 A, 36 n. Compare *Hankins v. State*, L. R. A. 1918 D, 794 note.

³New York State Bar Association Reports, Vol. 33, p. 401; Vol. 34, p. 274, 278. 2 Jr. Crim. Law and Criminology, p. 531.

process" and trial by jury clauses, on the question of whether the mental element required by law was present.⁴

By the Trial of Lunatics Act (1883) in England, if at the trial for any offence, the evidence indicates that the defendant was insane, the jury must find specially that he was guilty of the offence charged, but was insane at such time. If they so find, the court is to order him kept in custody as a criminal lunatic until further order. The Act abolishes the verdict of acquittal on the ground of insanity and substitutes a special verdict. This prevents the plea of insanity from being set up upon any but capital charges.

In spite of the disrepute of insanity pleas and insanity experts, it is likely that there are many more insane, defective and irresponsible persons who are unjustly convicted of crime than there are guilty persons who succeed in escaping by pretended insanity. It requires a good actor to feign insanity, whereas there are common varieties of mental disease which may escape ordinary observation. This is shown in the Tenth and Eleventh Annual Reports of the Municipal Court of Chicago (December 1915 to December 1917), much of the space of which is given to the work of the psychopathic laboratory under Dr. William J. Hickson. The report of the laboratory is based on studies of 4,486 cases for mental abnormalities.⁵

Dr. Hickson's report emphasizes the wide prevalence of feeble mindedness among delinquents. Classified statistics are given with regard to offenders referred to the laboratory by the various criminal branches, showing the mental level of the offenders examined and the conditions of arrested development or insanity found. Among those examined were a certain number of average intelligence (p. 258). Below these come the so-called "*Sociopaths*" of different grades, ranging from a mental age of 12 to 15 years. Below these come the *Morons*; the high grade morons ranging in mental age from 9 to 11 years; middle grade morons from 8 to 9 years, and low grade morons from 7 to 8 years. Below the morons fall the imbeciles, who correspond with children 4, 5 and 6 years old; lastly, the idiots, who correspond with children not over three years of age.

Mental defectives fall into two great classes, viz., Amentia and Dementia; those with "*intelligence defect*," subdivided into idiots and imbeciles, morons, sociopaths, and those suffering from paresis, senile

⁴*Strasburg v. State* (1910), 60 Wash. 106, 110 Pac. 1020, 32 L. R. A. (N. S.) 1216, 2 Jr. Crim. Law, p. 521, 529.

⁵A popular exposition of this report is given by Herbert Harley, in the *Journal of the American Judicature Society* for October, 1918 (Vol. 2, p. 69, entitled, "Understanding the Criminal").

dementia and the effects of alcohol and narcotics; *and secondly*, those with "*affective defects*" under which are included the insanities, such as dementia praecox, the progressive, incurable decay of the mind often showing itself in early youth. Dementia praecox is divided by Dr. Hickson into a number of varieties (p. 142), paranoid, katatonic, hebephrenic and schizophrenic.

Dr. Hickson employs extensions of the Binet-Simon and other intelligence tests, not only to evaluate intelligence *per se*, but also to diagnose the various disturbances of the intelligence function and differentiate the various psychoses, such as the different forms of dementia praecox, manic depressive insanity, hysteria, etc. (Report, p. 277). If these results prove reliable, this extension of the intelligence tests for differential diagnostic purposes in psychopathic cases is a remarkable achievement.

The feeble minded question is important, but not so important as the praecox. Dementia praecox is often found combined with feeble mindedness, and this combination results in a type of disorder designated by Dr. Hickson by the horrible name of "*Pfropfhhebrenia*." This is a dangerous criminal type inclined to such crimes as homicide, robbery, rape, and sexual offences. In general dementia praecox may be regarded as an active instigator in contrast to feeble mindedness, which may be regarded as a passive instigator of crime, destroying the capacity for inhibition. Idiots and imbeciles exhibit early their mental defect and are easily detected, but the moron and the dementia praecox case whose mental defect appears later, are the dangerous types in need of expert attention, as the others are too low mentally to be dangerous.

Dr. Hickson criticises our present legal test of criminal responsibility in relation to mental disease on page 137 of this report. He says:

"The right and wrong test, which is the legal criterion of mental responsibility, was promulgated in 1843 (McNaghten's case). It is applicable to but a few diseases, and these must be in such outspoken form in order to be applicable that the individual is incapable of perpetrating most any of the ordinary crimes; therefore this law, if rigidly interpreted, nullifies itself. The conditions to which it would apply would be those in which intelligence defect is primarily involved, such as 'paresis,' 'senile dementia,' 'feeble mindedness'; thereby omitting the large group of insanities in which the affective or emotional sphere is primarily involved, and the intellectual only secondarily. Most of the continental criminal codes are so drawn up as to include the affective or emotional insanities."

It is generally recognized that mere mental weakness or disorder, feeble mindedness, degeneracy, moral depravity, or even insanity, do not exempt from punishment where there is capacity to know that the

act is wrong.⁶ The tests of criminal responsibility generally adopted in this country are (1) the right and wrong test (a) in the abstract, (b) as regards the particular act, and (c) as regards moral or legal wrong; and (2) the irresistible impulse test. The Supreme Court of New Hampshire denies the utility of any specific legal test, and leaves it to the jury as a question of fact whether the crime was the product of mental disease.⁷ Another test which has been suggested is capacity to conceive the specific intent which constitutes one of the elements of the particular crime.⁸ Delusion is not recognized by English or American courts as a special test, but is simply one form of aberration which destroys knowledge of right and wrong or creates mistakes of fact.

The right and wrong test may be applied in such a way as to convict almost any one except a total idiot or a raving manic, or in such a way as "to allow very considerable fish of the malefactor species to escape from the judicial net."⁹ Juries exercise the actual, albeit unauthorized, power to mitigate the rigors of the law by refusing to convict and by dealing with cases according to what they feel to be right and just. It is desirable, however, for the law to formulate intelligently what it is driving at.

A committee of the American Institute of Criminal Law and Criminology has devoted much study to the problem of determining the relation of insanity to criminal responsibility. This committee was composed of four physicians and five lawyers, with Prof. E. R. Keedy of the University of Pennsylvania as Chairman. This committee after several years of study, reported a bill providing a test for determining criminal responsibility when the defence of insanity is raised, and a method for taking expert testimony.¹⁰

The test adopted in the proposed bill provides that the accused's mental disorder shall be a defence when "by reason of such mental disease he did not have the particular state of mind that must accompany such act or omission in order to constitute the crime charged." The bill does not attempt to define what is meant by "*the particular*

⁶16 Corpus Juris, 99; *Rogers v. State*, 128 Ga. 67, 10 L. R. A. (N. S.) 999, note; *People v. Spencer*, 264 Ill. 124; *Commonwealth v. Wireback*, 190 Pa. 138, 42 Atl. 542.

⁷*State v. Jones*, 50 N. H. 369, 9 Am. Rep. 242.

⁸Bishop "Criminal Law" sec. 381; *State v. Peel*, 23 Mont. 358, 75 A. S. R. 529. Keedy, 30 Harv. Law Rev. 585.

⁹F. W. Griffin, "Insanity as a Defence," Journ. Crim. Law & Crim. II, No. 2, July, 1910, p. 18.

¹⁰Journal Cr. Law and Crim., II, p. 521. This bill is discussed in a learned article by Prof. Keedy in the Harvard Law Review, XXX, pp. 535 and 724 (1917).

state of mind that must accompany such act." If this refers to the *specific intent*, then the proposal adds nothing to the existing law but subtracts from it. This would be the same as the present harsh rule in regard to intoxication.¹¹ Drunkenness or even temporary insanity produced by voluntary intoxication which renders a person unconscious of what he is doing, furnishes no excuse, except to negative specific intent.

If on the other hand "*the particular state of mind*" includes a mind that is sufficiently sane to be held accountable (in other words, *general intent*), then the proposed test comes down to the absurd truism that no person shall be convicted who by reason of mental disease did not have the proper degree of rationality that must accompany the act in order to constitute a crime. This simply begs the question and travels in a very small circle. As the Supreme Court of Illinois said in *Chase v. People*,¹² "Sanity is an ingredient in crime as essential as the overt act, and if sanity is wanting, there is no crime." The proposed test sheds no light whatever on the vexed question whether irresistible impulse destroys responsibility.

The excuse of insanity cannot be confined to absence of specific intent.¹³ Take murder, for example; the specific intent would certainly be supplied by an intent to kill or to do grievous bodily harm. A raving maniac intentionally kills his keeper. How does the proposed test help to determine his responsibility? Insanity may not negative the specific intent to kill any more than intent to rape or to forge; yet it may negative "general intent," or *mens rea*, which includes a morally accountable and punishable mind.¹⁴ All the elements of the particular crime, including the specific intent, may be present, but not the general conditions of criminal responsibility, which are the same for all crimes. This is the great difference between insanity and voluntary intoxication as a defence. Intoxication is no excuse except when it negatives specific intent, whereas, insanity affords an excuse even where the specific intent may be present. Prof. Keedy, in his article and report, practically ignores the subjective conditions of *general intent* as contrasted with the variable *specific intent*.

It is surprising to find so much confusion and uncertainty in the authorities on the most fundamental principle of the criminal law, that

¹¹*Upstone v. P.*, 109 Ill. 169; *Cheadle v. State* (Okla.), 149 Pac. 919; L. R. A. 1915 E 1031.

¹²40 Ill. 352, 358.

¹³Markby, *Elements of Law*, sec. 729.

¹⁴Stroud, *Mens Rea*, p. 18. Silas Alward, *Mens Rea*, 38 Canadian Law Times 646 (Oct., 1918).

every crime involves the joint operation of act and intent. The maxim is frequently quoted "*Actus not facit reum, nisi mens sit rea*."¹⁵ This maxim has been said to be the foundation of all criminal justice.¹⁶ The cases and text writers, however, fail to agree upon a clear cut, authoritative exposition of *mens rea*. In the great case of *Regina v. Tolson*,¹⁷ Stephen, J., discusses *mens rea* but without his usual perspicacity. He seems to identify it with specific intent, which varies in different crimes. He denies that there is any such thing as a general criminal intent common to all crimes.

Wills, J., makes a statement in this same Tolson case, which more nearly represents the theory of the law. "It is, however, undoubtedly a principle of English criminal law that ordinarily speaking a crime is not committed if the mind of the person doing an act in question be *innocent*. * * * The guilty intent is not necessarily that of intending the very act or thing done and prohibited by common or statute law, but *it must at least be the intention to do something wrong*. That intention may belong to one or the other of two classes. It may be to do a *thing wrong in itself* and apart from positive law, or it may be *to do a thing merely prohibited by statute* or by common law, or both elements of intention may co-exist with respect to the same deed."¹⁸ In other words a person must be blameworthy, in having either an anti-legal or anti-moral intention.

The point on which Justice Stephen apparently goes astray, is the difficulty of distinguishing motive from intent.¹⁹ It is, of course, true that honest motives are no legal defence, where one consciously and knowingly violates the law, as in the case of anarchists and conscientious objectors.²⁰ Bad motive is not a necessary element of criminal intent. Conduct may be flagrantly illegal, and at the same time morally innocent or even heroic. But criminal intent, or accountable mind, involves the capacity to know the rightfulness or wrongfulness of the conduct, according to the law or the accepted moral standards of the community. This is the basis of the defence of mistake of fact, which is a defence not merely because it negatives specific intent, but also because it negatives guilt and the conscious choice of wrongful

¹⁵Broom's Legal Maxims, p. 256; 2 Pollock & Maitland, History of English Law, p. 474.

¹⁶Per Cockburn, J., in *Reg. v. Sleep*, 8 Cox C. C. 472, 477.

¹⁷23 Q. B. Div. 168.

¹⁸Beale's Cases, Crim. Law (3rd ed.) p. 237.

¹⁹See W. W. Cook, Act, Intent and Motive, 26 Yale Law Journal 645, 661.

²⁰*Reynolds v. U. S.*, 98 U. S. 145; *U. S. v. Harmon*, 45 Fed. 414. Stroud, Men's Rea, p. 10.

conduct. According to *Reg. v. Prince*,²¹ mistake of fact is no defence if the defendant knows he is doing an act immoral or evil in itself. Notwithstanding the mistaken belief there is a guilty state of mind.²²

In the case of *Chisholm v. Doulton*,²³ Cave, J., says: "It is a general principle of our criminal law that there must be as an essential ingredient in a criminal offence, some *blameworthy condition of mind*. Sometimes it is negligence, sometimes malice, sometimes guilty knowledge, but as a general rule there must be something of that kind which is designated by the expression *mens rea*." In other words, the general principle of the law is that a crime is not proved if the mind of the person doing the act is morally innocent. This involves knowledge of its wrongful or illegal character.

In *Sherras v. Rutzen*,²⁴ Wright, J., says: There is a presumption that *mens rea*, an evil intention, or a knowledge of the wrongfulness of the act is an essential ingredient in every offence."

In *Bank of New South Wales v. Piper*,²⁵ in the opinion of the Privy Council it is said: "The questions whether a particular intent is made an element of the statutory crime, and when that is not the case, whether there was an absence of *mens rea* in the accused, are questions entirely different, and depend upon different considerations. In cases when the statute requires a motive to be proved as an essential element of the crime, the prosecution must fail if it is not proved. On the other hand, the absence of *mens rea* really consists in an honest and reasonable belief entertained by the accused of the existence of facts, which, if true, would make the act charged against him innocent." This is a clear statement of the distinction between specific intent and *mens rea* in the sense of innocence or absence of moral blame. So in *Hale's Pleas of the Crown*, p. 42, it is said: "Ignorance of fact doth excuse for such an ignorance; many times makes the act itself morally involuntary."²⁶

Prof. Keedy's proposed test would make insane persons criminally responsible for violating statutory prohibitions where no specific intent is necessary, and where fines are imposed as an incentive to compel persons to comply with the regulations at their peril. It is believed,

²¹L. R. 2 C. C. 154 (1875), Beale's Cases, Cr. Law, p. 275, 280.

²²Bishop, Stat. Const., sec. 490: Cp. D. Trowbridge, Calif. Law Rev. VII, p. 1; *Holton v. State*, 28 Fla. 303, 308; *Brown v. State*, 23 Del. 159, 74 Atl. 836, 25 L. R. A. (N. S.) 661; *Maguire v. People*, 219 Ill. 16.

²³22 Q. B. Div. 736, Beale's Cases, p. 257.

²⁴(1895) 1 Q. B. 918, Beale's Cases Cr. Law, p. 260.

²⁵(1897) Appeal Cases, 383, Beale's Cases Cr. Law, p. 265.

²⁶See also *Rex v. Ahlers* (1915), 1 K. B. 616, 625; Cp. C. Kenny, 31 Law Quar. Rev. 299.

however, that competent age, sanity and some degree of freedom from coercion are always presupposed in any case for criminality.

Prof. Keedy states,²⁷ "that the tests of irresponsibility now employed consist simply of a statement of certain mental symptoms, viz., inability to distinguish between right and wrong, irresistible impulse, and delusion, the existence of one or more of which is treated by the law as a defence. These symptoms," he says, "represent but a small portion of the phenomena of mental disease, and they bear no necessary relation to the ordinary legal rules for determining responsibility. They are simply obsolete medical theories crystallized into rules of law."

This appears to the writer to represent an absolute failure to understand the ethical basis of these rules of law, viz., that criminal responsibility rests upon moral accountability as in the case of children from 7 to 14. As pointed out by Somerville, J., in his notable opinion in *Parsons v. State*,²⁸ (probably the best exposition of the subject in the books): "There must be two constituent elements of legal responsibility in the commission of every crime, and no rule can be just and reasonable which fails to recognize either of them: (1) capacity of intellectual discrimination; and (2) freedom of will." These are tests of responsibility in criminal cases because without such powers a man is not morally accountable.

Chief Justice Shaw's opinion in the famous case of *Commonwealth v. Rogers*,²⁹ is often quoted: "In order to commit a crime, a person must have intelligence and capacity enough to have a criminal intent and purpose; and if his reason and mental powers are either so deficient that he has no will, no conscience or controlling mental power, or if through the overwhelming violence of mental disease, his intellectual power is for the time being obliterated, he is *not a responsible moral agent* and is not punishable for criminal acts."

The right and wrong and irresistible impulse tests are, therefore, not based on obsolete medical theories or on arbitrary symptoms of insanity, but on the general conditions of legal responsibility. Insane persons, like intoxicated persons may have intent to kill, to set fire to houses, to steal, to rape, or to defraud; but the great question is whether the defendant is a responsible moral agent. Crime does not exist unless the actor can be regarded as morally responsible for his act. If not, he is not culpable and does not deserve punishment. As Stephen says, "Legal punishment connotes as far as possible moral infamy."³⁰

²⁷30 Harvard Law Rev., p. 555.

²⁸81 Ala. 577, 2 So. 854; 60 Am. Rep. 193, Beale's Cases Cr. Law, p. 342.

²⁹(1884) 7 Metc. 500.

³⁰2 Stephen "Hist. Crim. Law," p. 81, 91, 172, 183.

The general subjective conditions of criminality, presupposed as a general rule in addition to the particular state of mind,* motive or intent included in the definition of various crimes, are then as follows: (1) competent age; (2) some degree of sanity; (3) freedom from overpowering coercion, and (4) a "punishable state of mind," i. e.,—some blameworthy form of intentionality, consisting either of intent to commit some crime or to do some serious wrong.⁸¹ Gross or culpable negligence may in the case of a killing and perhaps of assault, take the place of intent to do wrong.⁸² While a guilty mind or conscious wrong-doing is usually an essential ingredient of crime, yet this fourth element may be excluded in police regulations for the sake of practical enforcement, and persons may be held to act at their peril even where they labor under ignorance or mistake as to the circumstances and no intent to break the law or to do a forbidden act is proved. In such cases, a general correspondence between guilt and punishment will suffice.⁸³ This stringent rule of diligence or acting at peril, should clearly not be applied as against incompetent persons. *Mens rea*, or accountable mind to the extent of the first three conditions of criminality, is still required.

The doctrine of constructive intent, or criminal liability for the accidental consequences of attempts to carry out some criminal purpose, involves intent to do something wrong in itself. This is applicable only where the criminal intent is to do something *malum in se* and not where it is merely to do something *malum prohibitum*.⁸⁴

The positivist school of criminologists, represented by the Italian writers Ferri, Garafalo and Lombroso, reject the postulate of the classical school embodied in our present law, that the basis of the right of punishment is an abuse of free choice or moral liberty. They are determinists and deny the freedom of the will. According to them, punishment should not be based on moral culpability. Physical imputability of the criminal act is sufficient to constitute penal accountability. For the positivists, every crime is the effect of irresistible forces, and is a mere symptom of its author's dangerous criminal tendency. Penal treatment should be governed by the characteristics of the agent, rather than by the gravity of the particular offence for which he happens to be prosecuted. Punishment should fit the criminal

⁸¹Cp. II Stephen Hist. Cr. Law, 91; Gen. View p. 68.

⁸²See L. R. A. 1918 B, p. 954, note; L. R. A. 1917 D, 950, note.

⁸³Tenement House *Dept. v. McDevitt*, 215 N. Y. 160; *Hobbs v. Winchester Corp.* (1910), 2 K. B., 461, 471.

⁸⁴*Commonwealth v. Adams*, 114 Mass. 323; *State v. Horton*, 139 N. C. 588, Beale's Cases Crim. Law, p. 239; *Com. v. Mink*, 123 Mass. 422, Beale's Cases Crim. Law, p. 300.

rather than the crime. The justification of punishment is to be found in considerations of social defence. In fact all punishment as such, is unjust, since no action is good or bad, or worthy of praise or blame or repentance. The attitude of the law in dealing with crime should be the same as dealing with the insane.³⁵ The infliction of punishment is to be considered as a clinic designed to combat a social and individual malady, rather than the verification of a threat of retribution which hangs over wrong doers.

The positivist theory is neither practical nor convincing.³⁶ As a matter of metaphysics, the question of free will versus determinism may be worthy of speculative discussion, but for practical purposes the law must accept the common-sense postulate of free will upon which we all act. We assume in normal persons moral responsibility. They are accountable for their acts, and may justly be punished if they fail to control their conduct.³⁷

In the case of *State v. Strasburg*,³⁸ an argument was made along the lines of the positivist theory. It was urged that the defence of insanity might be abolished now that the modern humane treatment of those convicted of crime practically removes them from the realm of punishment and places them in a position little different from the insane. The central idea upon which the whole fabric of criminal jurisprudence was formerly built, was the idea that every criminal act was the product of a free will, possessing a full understanding of the difference between right and wrong, and full capacity to choose a right or wrong course of action. It was urged, however, that modern science shows that a dominant percentage of all criminals are not free moral agents, but as a result of hereditary influences and early environments are either mentally or morally degenerate, or their crimes are committed under the degenerating influence of intoxicating liquor. It is accordingly folly to punish, and further to debase the individual, as the element of free will is no longer to be taken into consideration.

These arguments were rejected by the Washington Court, which pointed out that the stern and awful fact still remains, that the status and condition in the eyes of the world and under the law of one convicted of crime is vastly different from that of one simply adjudged insane. The element of punishment still exists in our criminal law.

³⁵Ferri, *Criminal Sociology*, p. 360, 362.

³⁶See *The Concept of Punishment*, by Ugo Conti XIII *Illinois Law Review*, p. 234.

³⁷See *Responsibility and Crime*, by E. S. Kite, *Jour. Crim. Law & Crim.*, V, p. 63.

³⁸60 Wash. 106, 32 L. R. A. (N. S.) 1216.

While it is true that punishment is largely an instinctive matter and various factors, social and individual enter in, yet it cannot be denied that it expresses the indignation and condemnation of society to an extent measured by the severity of punishment, which must be adequate to the shock which the offence gives to public feeling; otherwise mob violence may be resorted to. It must, therefore, be felt to be a just equivalent for what the offender has inflicted, and must consider the degree of moral guilt in the offender, not with misplaced tenderness but with discriminating severity. Insane persons are not punishable not only because punishment would not be beneficial to them but because it would not be just. In general, the justification of punishment is not to be found in its effects upon those whom it does not deter, but upon those to whom its threats may supply a motive of self-restraint. The capacity of distinguishing right from wrong is a test of responsibility, because without such power of discrimination there is no blame, and guilt determines liability to criminal punishment.³⁹

In the case of children between 7 and 14, the test of responsibility is whether the child is capable of appreciating the nature of his acts and distinguishing between right and wrong.⁴⁰ Consciousness of guilt may be shown by hiding and concealment which evidence a capacity to discern between good and evil. Delinquency of a child on the other hand, is not regarded as guilt of crime, but indicates need for a change of custody for the protection of the infant and society, and not for punishment.⁴¹

We have thus far considered the theory and basis of the legal tests of criminal responsibility. It is necessary, also, to consider how they work out in practice. Is the knowledge of the right and wrong test a safe and satisfactory working rule? According to the leading authority, *McNaghten's case*,⁴² the main test is: Did the accused at the time, know that he was doing wrong? If not, he cannot be convicted. How can this be directly proved to the jury? Dr. H. Oppenheimer suggests the following:⁴³ "Whilst the most definite proof should be required of the *existence* of mental disease, when once it has been established that the prisoner is a lunatic, the present pre-

³⁹Markby, *Elements of Law*, sec. 730, p. 354; Kenny, *Outlines Criminal Law*, p. 37; Bishop, *New Criminal Law*, 8th ed., sec. 286; Ames, *Law and Morals*, 22 Harv. Law Rev. 97, 99.

⁴⁰*R. v. Owen*, 4 C. & P., p. 236.

⁴¹*Juvenile Court v. State*, 139 Tenn. 549, 201 S. W. 771, Ann. Cases, 1918 D. 752.

⁴²St. Tr. (N. S.) 847; 10 Clark & Fin., p. 200, Beale's Cases Cr. Law, p. 326.

⁴³*The Criminal Responsibility of Lunatics*, p. 253.

sumption of law should be reversed; and those proved to be of unsound mind should be assumed until the contrary be shown, *not* to know the nature and quality of their acts and that that which they were doing was wrong." Thus it need not be positively proved that defendant was not able to distinguish right from wrong, or that his ignorance extended to the very act of which he is accused. If the evidence exhibits morbid impulses; if the will is weakened; if the intelligence is of low grade; if there are delusions, obsessions, or other symptoms of mental disease, this evidence may raise a presumption of such disturbance of the mental and volitional faculties as to exclude intelligent choice of conduct.

According to one of the rules of *McNaghten's* case, if the accused is subject to partial insane delusions, or monomania, he is to be treated as if his delusions were true. Thus if A kills B, the result is; (1) if A did not know that he was doing wrong, he cannot be held accountable; (2) if A thought that B was about to do him grievous bodily harm, A is not guilty, for assuming the delusion to be true; A is simply acting in self-defence; but (3) if A knew he were doing wrong, or (4) if A acted under some delusion which, if true, would not have justified his act, *e. g.*, that B had been intimate with A's wife; in both these cases A would be guilty of murder.⁴⁴ The delusion would, however, be available as evidence that A did not know that he was doing wrong, even if its truth would not create such mistake of fact as to justify the act.

If A kills B knowing that he is killing B, and knowing that it is illegal to kill B, but under the insane delusion that the salvation of the country or of the human race will be obtained by getting himself executed for the murder of B, and that God has commanded him to get himself sacrificed in this way, his action under this delusion will not be punishable, if knowledge of right and wrong refers to moral wrong rather than to conscious illegality. Our analysis shows that moral wrong is the test which should be adopted and this has been so held in New York.⁴⁵ Thus one acting under the insane delusion that God has appeared to him and ordered the commission of a crime by him, is not guilty, although he knows his act to be contrary to law, because he is incapable of understanding the wickedness of his deed and is not morally responsible.

McNaghten's case, however, seems to hold that in the case of partial delusions or monomania, guilt should be made to depend on

⁴⁴Thwaite's Guide to Crim. Law & Proced., 9th ed. p. 20.

⁴⁵*People v. Schmidt* (1915), 216 N. Y. 324, 110 N. E. 845, L. R. A. 1916-D, 519, 527.

whether the delusion was such, that if things were as he imagined them to be, he would be legally justified in the act. This idea has been much criticized on the ground that there is no such thing as partial insanity, and that one cannot be affected with insane delusions on one or more particular subjects without affecting the entire mind. If one screw is loose, the whole machine is affected. Accordingly the Supreme Court of Colorado has held that hallucinations, delusions and paranoia may relieve from responsibility, not only when the imaginary facts, if true, would excuse, but also, even if the supposed grievances or wrongs would not legally justify the act. The existence and nature of the delusion, is not the test of responsibility, but is evidence on the question whether the mind is so impaired, unbalanced and beclouded that defendant is not a responsible moral agent. If the defendant is laboring under delusion that he is redressing or avenging some supposed injury, or producing some supposed public benefit, the fact that he knew at the time that he was acting contrary to law, should not necessarily make him accountable.⁴⁶

If A suddenly stabs B under the influence of impulse, caused by disease of such a nature that nothing but mechanical restraint would have prevented the stab, A is not punishable if absence of power of control is recognized as a defence, but would be punishable if a strong motive, such as fear of punishment, might have prevented the act. Only those ought to be punished, whom the threat of the law could or might have deterred from the act.⁴⁷ According to the theory of moral responsibility, both the right and wrong test, and the irresistible impulse test ought to be recognized. If free will and self-restraint be destroyed by mental disease, knowledge of right and wrong is entirely useless. Will is as necessary an element of criminal intent as are reason and judgment.⁴⁸ Nevertheless, in many jurisdictions uncontrollable impulse is not a defence unless the defendant was also unable to distinguish right from wrong.⁴⁹ Where a man's acts are automatic and mechanical, the explosive discharge of motor centers which the patient is helpless to prevent, the established legal test of right and wrong cannot be strictly applied without injustice. The controlling influence of the inhibitory centers is for the time being suspended, and the acts may be the mechanical reflex movements from internal or external

⁴⁶*Ryan v. The People*, 60 Colo. 425, L. R. A. 1917 F, p. 646; *Hotema v. U. S.*, 186 U. S., p. 413.

⁴⁷Oppenheimer, *Criminal Responsibility of Lunatics*, p. 129.

⁴⁸*Parsons v. State*, 81 Ala. 577, 596, 2 So. 854, 60 Am. Rep. 193. See also *Hawkins v. State*, L. R. A. 1918 D, 784, 794 note. Prof. E. R. Keedy, 30 Harv. Law Rev. 546.

⁴⁹*Smith v. State*, Ann. Cas. 1912 A, p. 36, note.

suggestions. The defendant is not their author, but their victim.⁵⁰

The recognition of the principle that punishment should be in proportion to the gravity of the crime and the culpability of the criminal, indicates the basis of qualified responsibility as resting on the degree of guilt of the partly responsible persons. Feeble mindedness, for example, might well be admitted as a ground for discretionary reduction of penalty, even if not a full defence. Prof. Keedy's proposed test of absence of specific intent, seems to furnish no adequate guide to diminished responsibility for the feeble minded.⁵¹

The defendant may have some sense of right and wrong, he may be aware that punishment will follow detection, but he may have far less appreciation of the consequences of his acts and less self-control than normal men or even children. Can we say that some knowledge of right and wrong and self-control, however, poor and imperfect, are sufficient? Suppose they are less than in normal children of 7, 10 or 14 years of age? Want of judgment, lack of will, and weakness of character, make the feeble minded and defective persons an easy prey to their passions and impulses. The law has failed to take sufficient account of the possibility of different degrees of accountability of those not altogether innocent. At present, the jury fills up the gaps existing in the law of responsibility, and takes into consideration the moral elements and motives of crime. Those who as a result of hereditary taint and unfortunate environment, are mentally and morally degenerate, have not full penal accountability with normal men any more than little children, and if punishable at all, are punishable in a much less degree.⁵²

It may be suggested in conclusion, that the main issue where the defence of insanity is raised, is whether the defendant is morally accountable for his act, and if so, to what degree? The inquiries to be submitted for the guidance of the jury in determining this question, should be in substance, these:—1. Was the defendant at the time of the commission of the act afflicted with a disease of the mind, or with defect of intelligence, comparable to that of a child under (say) 14 years? 2. Was the alleged criminal act so connected with such mental disease or defective intelligence as to be regarded as the offspring or product of it, either in whole or in part? 3. Is the defendant to be regarded as culpable or blameworthy, according to the two following tests:

⁵⁰Dr. Alfred Gordon, *Mental Deficiency*, Jour. Crim. Law, IX, pp. 404, 410 (Nov. 1918).

⁵¹See 30 Harv. Law Rev. 551 to 554. Cp. Tarde, *Penal Philosophy*, p. 186, 187.

⁵²*State v. Richards* (1873), 39 Conn. 591; Beale's *Cas. Cr. Law*, p. 333; Arnold, *Psychology and Legal Evidence*, p. 503.

(1) Did he know that he was doing wrong, something that he ought not to do? (2) Had he so far lost the normal power of volition, that he was not able to avoid doing the act in question? 4. Where his intelligence and volition so far below normal, that although dimly conscious that his act was wrong, he was only partially accountable? Should his mental condition be considered in mitigation of punishment?

This represents a modification of the questions proposed in the case of *Parsons v. The State*,⁵³ and differs from the suggestion of the New Hampshire court in *State v. Jones*,⁵⁴ in inquiring into the moral quality of the act, and not merely whether it was the direct product of mental disorder, without regard to the degree to which the disease had progressed, or to the extent to which it had deprived him of the knowledge of right and wrong, or of the capacity for self-control. If the defendant has only subnormal capability for controlling his actions, he may still be regarded as punishable in some degree, in spite of a somewhat low order of intelligence or a somewhat unbalanced mentality, which may also warrant custodial care.

The more corrupt the defendant's heredity and the more defective his mentality, the less his moral blame and punishability, but from the social viewpoint, the greater is the necessity for sending him to a proper institution. Neither imprisonment nor probation and parole are suited to defective delinquents who cannot become normal citizens. It is accordingly urged by Dr. Hickson, that farm and industrial colonies should be established so that dangerous morons, mental perverts and other degenerates may be placed under lasting restraint and supervision according to their needs. The establishment of suitable institutions for the feeble-minded, a half-way house between the penitentiary and the insane asylum, is a crying need in Illinois and in other states. In the alienist, the farm colony and the asylum lie society's protection against abnormal persons rather than in the criminal law. Any one who by reason of feeble mindedness, insanity or other disorder, mental or physical, such as leprosy or syphilis, becomes a menace to the safety or health of the public, should be confined for purposes of quarantine and treatment. This should be done on custodial principles rather than on principles of the criminal law, which deals with definite acts of wrongdoing rather than with general conditions of potential menace.

⁵³81 Ala. 577.

⁵⁴50 N. H. 369.

EFFORTS TO ABOLISH THE DEATH PENALTY IN ILLINOIS¹

JAMES J. BARBOUR²

The Illinois branch of the Institution of Criminal Law and Criminology assembles once again with the purpose and hope of making valuable contribution to the solution of that most absorbing world problem of how to deal exact justice to all mankind.

The blood that has been shed on the battle fields of Europe is bringing forth a harvest, and more emphatically is it becoming conceded every day that violation of law and offenses against civilization, whether the act of an individual, or a community, or a nation, must be followed by such treatment of the offender as will protect society from a recurrence of that particular form of disturbance, to say nothing of the deterrent effect upon others like criminally minded.

These just ends which we seek in the administration of the criminal law, on the surface appear simple of accomplishment, but on closer study we find ourselves almost baffled in our efforts to discover who are the real offenders in some instances, and what is the proper treatment or medicine that is to be applied to effect a cure.

Much of our thought will be given today to the suggestions from distinguished speakers who will discuss the question of the moral responsibility of offenders. This does not mean that anyone here will suggest a slackening of the efforts to protect society, or to make crime hideous, or to strike terror into the heart of the evil disposed. Rather will the purpose be to seek some humane plan to take the weak or evil disposed in hand before offenses are committed, with the view of safeguarding the public and developing to the point of the highest possible efficiency the elements of good that are inborn, though sometimes very faintly, in every human being.

No matter how abhorrent violence and crime are to us, we will always be conscious of the fact that people are in prisons, often as the result of inherited weaknesses, poverty, drunkenness and other misfortunes rather than from real vicious inclinations, and if we can

¹President's Address before the Illinois Branch of the American Institute of Criminal Law and Criminology, Chicago, Dec. 28, 1918.

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help them and people like them to better living, we are doing a positive good to the welfare and peace of society in general.

The May-scents down the nightland
Blew wild and cool and far,
And a free sweet air flung leaves to where
Swung a little free white star
By the long wall and weary
Where the Prison-People are.

They were the foolish children
Who could not find their way
From out their night to any light,
Nor knew that there was day.
And the evil night-roads called them,
And their weak feet went astray.

They were the crippled brothers
Who could not tread so fast
The paths of wrong as the swift and strong
Who did their deeds and passed;
But blundered in their sinning
And were trapped and bound at last.

They stay shut close from wandering
And we go free outside;
There must be bars—yet oh, the stars
So high and the world so wide,
So near the little darkened cells
Where the Prison-People bide!

How can we tell the evil?
How can we tell the right?
How shall we part, who see no heart,
The darkness from the light?
We only know that free we go
And they lie still in night.

The felonious killing of a human being has always been regarded as the most serious offense against society that can be committed, because we put a value on human life far greater than is given to property rights. We are as much concerned today as ever to protect life, but so long as people are killed and murders are committed the efficiency of existing preventive measures will always be debatable.

The doctrine of a life for a life goes far back to antiquity, but while in a number of states in this country capital punishment is the mandatory penalty for murder, in an increasingly large number of states the death penalty has been abolished. In Illinois the alternative penalties which juries are allowed to impose stand as a slight concession to that feeling of repugnance that is in almost every breast against the taking of human life, even by judicial sentence.

So great is the sentiment against the extreme penalty that a bill abolishing capital punishment passed in both houses of the Fiftieth Assembly in our State, and only failed of enactment because of the veto by the present Governor.

An attempt was previously made in the forty-ninth assembly, but the bill there failed of passage. The movement had the strong endorsement of Governor Dunne, who on various occasions, official and otherwise, had given his reasons for opposition to capital punishment.

The movement in this state has its strongest support from those of pronounced ideas, who believe that it is morally wrong to take human life under any circumstances short of self defence, or war. These people are the pioneers who, as years come and go, will, as have pioneers in other great moral movements, be more and more respected, and eventually gratefully lauded for bringing the effort to complete success.

A strong element that is now adding support to this effort are the alienists, psychologists, and practical workers in the field of criminology who insist that the culprit should be dealt with in the way of punishment only to the degree of responsibility and that there must be an end to the sickening attempt to hang imbeciles and defectives from whom oversight and necessary mental and physical and material treatment have too long been withheld.

A strong influence against these righteous efforts is the notion in the minds of many of our prosecutors, unconscious of its presence though the particular individual may be, that the ability and success of the State's Attorney is measured by the number of verdicts of hanging that he turns in. In giving my own observation and experience with reference to this subject, I quarrel with no one, nor take any adverse position on the question that society has a right to protect itself, and that certain offenses may be of so horrible a nature and the heart of the actor may be so malignant, that death should inevitably follow. I have not arrived at the point where I could not conscientiously vote the death penalty were I on the jury. I am will-

ing to withhold my inclinations to discuss or to consider society's responsibility to itself for taking human life until such time as the indifferent public knows more of the futility of capital punishment and the danger in its application, than they do now. While referring to the suggestions often made of the benefit that accrues to society in having this penalty remain upon the statute books, let us recall the fact that the Senator who made the strongest argument in the Fiftieth Assembly against the passage of the bill to abolish the death penalty made an admission, the truth of which must sooner or later be recognized. I call attention to the statement of Senator Jewell, Senate Debates A. D. 1917—336; "In the great city of Chicago, by reason of its enormous population, and by reason of its complex condition, and by reason of its people and its different nationalities and customs, murder is frequent. The infliction of the death penalty does not stop it. The infliction of any penalty won't stop it. It never will be stopped as long as the world stands, whether this law is taken off the books or whether it is not taken off." When it is realized, and fairly acknowledged by society that the taking of human life is to some extent an incident in the grouping of peoples in large communities and happens regardless of penalties to be visited upon the offender, we will have approached very near to the point where the propriety of the extreme penalty can be sanely and judiciously determined.

For the present, however, we will confine ourselves to the discussion of the following propositions:

1. There is a sharp distinction between being convinced to a moral certainty and beyond a reasonable doubt of the guilt of a man, in a case where the death penalty is to be inflicted, and in a case where the punishment is for a term of years, or for life.

2. The danger of convicting innocent men in cases where the prosecution is doing its utmost to respond to the excitement and prejudice aroused because of the commission of an atrocious crime is a reality, and not a conjecture.

3. The measure of punishment in this State where guilt is certain is dependent upon no fixed standard, but is left to the whim of an uninstructed and unenlightened jury, and is usually governed by impressions resulting from the color, or race, or sex of the prisoner, his poverty, or apparel, his friendships and family connections, the astuteness and ability of his counsel, or the lack of it, the mental attitude of the prosecutor, the judge and the bailiffs, and innumerable other things which might be mentioned, all of which have no relation

to the real question as to whether or not the killing is of that extreme degree of premeditation or viciousness which it was the intention of the framers of our laws should be the only excuse for resorting to the death penalty.

4. The lawlessness of our police, their connivance with vice and liquor forces, their military code of conduct with reference to themselves which makes the administration of an oath seem farcical, all of which create a distrust warranted by the facts disclosed in innumerable police prosecutions in many of the large cities of the country, and warranted also by the observation of everybody in touch with criminal procedure, is another factor which contributes to the great danger of unjust or excessive punishment being meted out in murder trials.

Necessarily this paper will be the result of personal experiences during five years as a prosecutor in probably the busiest office in America—an experience based on the personal handling of as many as seventy-five murder trials, and observation of procedure both before and since that official service.

Take the first point, that one can be fully convinced of guilt if only imprisonment is to follow, where doubt would arise if the death penalty was to be imposed.

Juries returned death verdicts against three prisoners whom I prosecuted. In each instance the court and prosecutor were convinced that the conditions warranted the changing of the sentence to life imprisonment. The jurors in each case had done their full duty, and from their knowledge, confined as it was solely to the evidence before them, they returned the only verdict that conscientious men in such a case could return. In the first case three men were on trial for killing a saloon-keeper as an incident to a robbery. At the end of the State's case there was absolutely no evidence against one man, who we had strong reason to believe was the one that had fired the fatal bullet. The identification of the other two defendants rested solely upon the testimony of a Hebrew bartender, with some slight corroboration as to identification of these two defendants as being the parties seen near to the tragedy. It was known to the jury that the young men had sometime previously been involved in another robbery, and had been confined in the Bridewell, and perhaps elsewhere. As against this single identification, convincing as it was to the prosecution, there were the denials of the defendants, an alibi sworn to by eighteen witnesses, and the knowledge that the most active police officer in the case was a heavy drinker, and frequently

accused of misusing prisoners. Subsequently he was discharged from the force. The defendants and their relatives accused this man of persecuting the boys and their families for years. The prosecuting witness was necessarily much in the company of the police before he announced his positive identification of the defendants. There was in this case some slight error as to the admissibility of testimony, which would have served as an excuse for the reversal of the case, had the Supreme Court felt that the proof of guilt was not of that overwhelming nature which is more satisfactory in a death case. This was a case that undoubtedly would have invited activity by clergy and others who might have become overenthusiastic in their desire to save a human life without reference to the evidence.

Let me say that while those two men have been in the penitentiary for years, and will probably die there, my conscience is clear, and I feel convinced of their guilt; yet I feel that to have allowed those men to have been hung on that evidence would have been monstrous, and I would have always been haunted by the fear that the Hebrew was mistaken, or had been overpersuaded in making the identification.

In another case two Italians were at enmity. They were both habitués of one of the foulest and most notorious houses of ill-fame in the city. They were both enamored with an inmate. One day one was seen pursuing the other in the streets, and when he reached him he shot him in the back and stood over him and continued to shoot until the man was dead. There was no doubt that the man committed the act, and that is was murder. In this prosecution I had the uninvited aid of an attorney, in the employ of the keeper of the resort, who himself was in court, a very interested participant in the trial. The defendant was absolutely friendless, and could speak English none too easily. Counsel had to be assigned to him. They did the best they could, which wasn't saying a great deal. The jury, governed by the light that they had, did the only thing possible, and imposed the penalty of death, but the prosecution had no way of determining the causes that led up to the killing. It might have been that the prisoner was in danger of assassination—that there were intrigues against him growing out of all kinds of criminal conspiracies and associations within the walls of an institution which the police should have long prior thereto suppressed. The distinguished judge who tried the case died before a motion for a new trial was heard, and we were glad, after negotiation, to reduce the penalty to life imprisonment, especially as before the trial commenced the prosecution's suggestion of a plea of

guilty with a penalty of twenty years had been rejected.

Society was no better or worse off by reason of this man's being allowed to live, but we have the satisfaction of knowing that one of the worst offenders in the city of Chicago against law and decency, whose corrupting influence and venality has made him for long years notorious, did not have the satisfaction of directing the course of justice in that case.

It is hard to believe that the death penalty is justifiable, when in one instance a jury renders a verdict of death, and later on, another jury on a subsequent trial in passing on the same evidence imposes a term of years only, or in some instances a verdict of not guilty. Law can hardly invite veneration, when we realize the injustice that might have been done to an individual by sustaining a verdict of death, when subsequently on a new trial twelve equally conscientious men return a verdict of not guilty. Very hurriedly I am going to cite some cases of local renown, where the uncertainty of guilt or the liability of the imposition of an extreme and unjust penalty was so great as to have almost made the state itself guilty of murder.

Let me direct your attention to the case of Nick Marzen, who was convicted in Cook County and sentenced to be hung. The Supreme Court reversed the case for error. He was tried again and sentenced a second time, and the case was reversed. The third time the jury fixed the punishment at thirty years in the penitentiary.

In the case of Thomas Synon, who was convicted of the murder of his wife, and sentenced to be hung, the Supreme Court reversed the cause and on a retrial the defendant was acquitted by a jury.

In the case of one Jocko Briggs, tried in Cook County, and sentenced to be hung, a new trial was granted by the Supreme Court, and Briggs was acquitted. Opinion is very much divided now as to whether or not the man was guilty. A captain of police has told me more than once, that he knew absolutely that Briggs was innocent.

In the case of one Billik who was convicted and sentenced to be hung, and the sentence affirmed, many people claimed that he was innocent. I thought he was guilty. It was proven that one of the State's witnesses had committed perjury. The sentence was commuted by Governor Deneen. Later Governor Dunne released the man, the pardon being granted on the ground that the man was innocent.

I stood at the bedside of a policeman named Mooney, who had been shot on the street while on duty. In the same room was Mrs. Mooney; also the Assistant Chief of Police, since then a chief of police.

There was also present, an inspector and a captain, and a young man in custody was brought into the room. Mooney looked at him, and in his dying statement—he died three hours after that—he said “That man is the man that shot me. I know him, I have arrested him before, and I have had him up in the police court. I don’t know why he should shoot me, but he did.” Within a week the inspector that stood there and heard that statement arrested somebody else, who confessed that he was the man who shot Mooney, and who was afterwards tried, pleaded guilty and sentenced to the penitentiary.

This case alone is sufficient warrant for me in always standing against the death penalty. The Chief of Police was my personal friend, a well meaning man, who while he lived enjoyed the confidence of the people more than anyone who has ever held that office. It was necessary that Mooney should assert that he knew that he was at the point of death. His responses to my vague questioning leading up to such an avowal were unsatisfactory, in that they suggested that he didn’t appreciate his critical condition. Whereupon the Chief of Police stepped to his bedside, and towering far above him, gave him the military salute, adding “We are here with the State’s Attorney for a statement. You know what is necessary. Go ahead and make the answers.” With this injunction he readily answered that he knew he was about to die. I had personal knowledge of what led him to make that statement, but I had no way of ascertaining what caused him to say that he positively recognized the prisoner as his murderer. When asked by the State’s Attorney on returning to the office as to whether I had gotten a good statement, I reported that the statement was a very good one, but there would be no trial, so far as I was concerned, unless better evidence could be obtained.

In the case of one Muetch, the father of a family, Muetch, while insane, killed his two children. The State’s Attorney sent two physicians to examine him. They both came back and stated that the man was insane and didn’t understand the nature of his act. A verdict was rendered which, instead of reciting the fact that the man was insane at the time of the commission of the act, as well as at the time of the trial, simply recited that he was insane at the time of the trial. The man was sent to the insane hospital. He afterwards fully recovered his reason. Another State’s Attorney succeeded to the office. He was a bit peeved at his predecessor and so this man Meutch, when he had recovered his sanity, was placed on trial, and on two different occasions, before different judges, the man who was insane when he

killed his two children was convicted and the death penalty imposed, and each time the judge gave a new trial. The State tried him a third time, and finally the pressure from the judges themselves was such that the State's Attorney had to stop trying to convict that man. The crime was so atrocious that any jury was ready to hang the man, regardless of whether the evidence showed he was sane or insane.

Here is a case, right here in Illinois, happening in 1909, of which there is an abundance of proof. Neil Shumway, and Illinois boy, went to Nebraska to visit his brother. While there he sought for work on the farm of a man named Martin. Martin's wife was afterwards found murdered, and Shumway was accused of the crime and tried and convicted. Although he stoutly protested his innocence, he was hung in the Nebraska State Penitentiary in 1909. Three years afterwards, Martin, the wealthy farmer, died, and on his deathbed confessed to having murdered his wife, and to having permitted the conviction and execution of Shumway for the crime.

A Chicago paper in a Sunday issue in 1917 had this dispatch from Columbia, Mississippi:

"A death-bed confession by Joseph Beard, a farmer, announced to-day by the sheriff's office, cleared of suspicion William Purvis, who twenty-five years ago escaped death by hanging after conviction for murder, only because the noose about his neck slipped when the scaffold trap was sprung. Purvis was found guilty of killing from ambush one, William Buckley. When he fell from the scaffold unharmed, spectators who thought it an intervention of providence, induced the authorities to put him back in jail, and an appeal to the Governor brought a commutation of sentence. Several years later Purvis was pardoned. He now lives in Lamar County. Beard, dying of pneumonia, confessed that he and two other men killed Buckley."

The most recent Illinois case that we recall where the probability that an innocent man has been convicted is almost apparent, is that of Ernest Wallace, a colored man, sentenced to death in the Criminal Court of Cook County, which sentence was reversed in the case of *People v. Wallace*, 279 Illinois, 139. Wallace was indicted jointly with one, Edgar Butler, for the murder of Jacob Levin, a saloon-keeper, who was killed in a holdup in his saloon. The defendant's guilt depended absolutely upon the accuracy and the truthfulness of the testimony as to identification by three witnesses, all of them colored, none of whom had ever seen the defendant prior to the tragedy. Let us at the outset call attention to the first ear-mark of police so-called efficiency as shown in the statement in the Supreme Court's opinion that "the indictment was *nollied* as to Butler, and no circumstance appears in the evidence connecting him, even remotely, with the crime."

The known inability of colored people intelligently to comport themselves and make observations following the discharge of a revolver

in an attempt to commit murder, at once suggests the unreliability of the testimony in this case. One witness was a colored man named Porter, and as to him the court says:

"Porter had testified that he was standing at the bar . . . when a man ran in with a revolver in his hand, which he pointed at the bar-tender . . . Porter saw the flash of the revolver and heard the shot. He dropped down, crawling toward the door, and fell over somebody at the door. On the trial he pointed out the plaintiff in error as the man he saw fire the revolver in the saloon. Porter had never seen the defendant before, he knew nobody else who was in the saloon, and on the trial he failed to recognize any of the witnesses as persons who were in the saloon at the time of the shooting. . . .

"Porter's memory of events occurring after he left the saloon is so uncertain and obscure, and his testimony as to what he did, where he went and who was with him is so indistinct and confused, that no intelligent account of his actions or whereabouts can be derived from his statements."

Able counsel, for small compensation, defended this man and were able to convince the public finally that Wallace was absolutely innocent. Wallace denied his guilt, denied being at the scene of the robbery and denied having met any of the witnesses. He said he spent the afternoon and evening miles away, at Butler's pool room, 3138 State street. Three other persons with whom he played "craps" at that place corroborated him as to the time, place and manner of spending the evening. In reversing this case on the ground of improbability of guilt, the court said:

"Recognizing the rule that the question of the credibility of witnesses is within the peculiar province of the jury and that a verdict in a criminal case will not be set aside unless there is clearly a reasonable doubt of the defendant's guilt, it is still the duty of the court of review to determine this question, and we do not regard the evidence in this record as sufficient to remove all reasonable doubt and create an abiding conviction that the defendant is guilty. Reprobation of the crime will not justify conviction of the accused upon evidence which fails to remove every reasonable doubt of his guilt."

In Cook County it is the poor and improperly defended upon whom the death penalty is easiest to impose. Take a person who is defective and who commits a crime, just the kind of a crime that a defective will commit; a crime that is more or less heinous and atrocious; and the jury and the courts are ready to hang that person, and they have been doing it to some extent.

This notwithstanding the criminal code of this State, provides

that one to be responsible for crime must have the mentality of at least a fourteen year old boy. The provisions are as follows:

"A person shall be considered of sound mind who is neither an idiot nor a lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years, or before that age if such person knows the distinction between good and evil An infant under the age of ten years shall not be found guilty of any crime or misdemeanor."

This is what the Chief Justice of the Municipal Court of Chicago said in an address before the New York State Bar Association, January 12, 1917, with reference to defectives and the crimes they commit, and their treatment.

"Several months ago a young man nineteen years of age was accused of murdering a woman. He has since been found guilty by a jury and sentenced to hang, which was modified to life imprisonment by the judge. This young man was in the Boy's Court two years previous to this crime, and found to have the mentality of a child between ten and eleven years. He had prior to that time been in the Juvenile Court. The director of the laboratory predicted to one of the judges, when the defendant was in on a minor charge, that he would become a serious offender. Our judge bound him over to the Criminal Court on a felony charge. The Criminal Court judge released him on probation, having no suspicion of the dangerous character of the boy. The fact that records are made in many instances before the crime, the findings are free from suspicion of having been made to meet the emergencies of a particular case."

Very recently in the state of New York where there is no alternative for first degree murder than the death chair, the Governor of the State was compelled to commute the sentence of a choir boy, who was only sixteen years of age when he fell into evil ways and murdered a shop keeper, whose store he was burglarizing. That boy gave way to extreme impulses coming at a period in life that is experienced by every boy. The acts committed in such a period very rarely have any relation to the subsequent life of the boy, where his environment is all that it should be. . . . In other words, I make the assertion that we, ourselves, and our children, have reason to thank Almighty God that through the accident of environment, or for other causes, our lapses in the adolescent period were not more serious in the nature and consequences.

The present Governor of this State, who is preeminent because of the conservatism, sanity and wisdom of his official acts, saw fit to veto the bill which had been passed, annulling the death penalty. He gave as justification for his veto, the fact that we are now at war, and that this was no time to discard long established laws dealing with

crime. But the good Governor has since had brought to his attention the unsatisfactory workings of this law, especially in the case of one, Chicken Joe Campbell, convicted of the murder of the wife of a former warden of the penitentiary, and sentenced to be hung. This case, depending as it does upon circumstantial evidence, is worthy of some comment, especially as it is a fair illustration of the possibility of error in imposing the extreme penalty. Let me assert at the outset that a discussion of this case can be had without reflecting in any way upon the character of any of the chief actors in the tragedy, other than the prisoner. The student or analyst of crime, upon the first reading of the tragedy in the newspapers could conceive of any number of people who might have committed the deed, and of any one of a number of motives that might have actuated them. The victim was a second wife. The husband was out of town. The persons in the immediate family circle bore relationship to the husband and the deceased wife that might have made them feel very antagonistic to the second wife. I mention this circumstance, having in mind the famous Lizzie Borden case in Fall River, Massachusetts. Several prisoners had access to the living quarters of the warden, and were in the vicinity at the time of the tragedy. The prior professional career of the victim, before her marriage to the warden, was naturally one of the incidents about the tragedy that led to careless conclusions on the part of those who did not have the benefit of an acquaintance with the lady, whom by the way, everybody having knowledge spoke of in terms of highest esteem. The prisoner absolutely denied his guilt, and the conviction rests entirely upon circumstantial evidence. The most satisfactory solution of this tragedy, after a consideration of the evidence adduced, is that Campbell was the guilty party. The fact that this was also the most desirable solution injects into the case an element of uncertainty, and provides the possibility of a motive governing not a police, but a prison made case. Conceding the guilt of this man, everybody must admit that the situation in which he was placed by the warden, the unusual freedom and privileges that were accorded him, all tended to make this crime unavoidable, and to that extent a case in which the infliction of the death penalty was improper. The one most bereaved being at the same time the representative of the law, was censurable and guilty of contributory negligence to a degree that made a modification of the penalty highly advisable. This conclusion is forced upon us upon a reading of the

summary, made by the distinguished jurist who wrote the opinion in the Supreme Court.

People v. Campbell, 282 Ill., 614, 625:

"The defendant was an applicant for parole, and his application had been continued several times. The parole board was to meet on Monday, the 21st, and Mrs. _____ had assisted him to some extent in reference to the parole, for which he would naturally have some gratitude, but there was evidence that he said he was going to get off the job whether he was paroled or not; that Mrs. _____ had made him run his legs off and was too hard to please. The fact, however, that he entertained feelings of gratitude towards Mrs. _____ for her kindness is not inconsistent with a belief that in the situation and under the conditions existing in the bedroom on that Sunday morning, in the stress and sway of an overmastering passion, nature harked back to primal instincts, and in the recession gratitude to the one who had befriended him, regard for the law, the unspoken pledge implied by honor from the liberty allowed to him, and even pity for the helpless victim, had no restraining power and the crime was committed. That is the only conclusion that can be drawn from the evidence, which proved defendant guilty beyond all reasonable doubt and to a moral certainty."

Without disputing the correctness of the conclusion of guilt which the record of the testimony presents, we insist that here is an instance where the death penalty added greatly to the task of administering that exact justice that will leave the conscience of the community satisfied that the final result was eminently proper.

The verdict that was rendered in the Campbell case by the twelve sturdy farmers residing outside of the city where the offense was committed did not reflect the sentiment of many people in the community who had given thought both before and after the tragedy to the peculiar situation that existed. Nor did it reflect the sentiment and opinion of police and prosecuting officials outside of the county. The Governor who had appointed that particular warden felt impelled to send his personal representative to the prison to take charge of affairs and to see that the rigor of the third degree and the solitary confinement was suspended. Our present Governor, after the case had been affirmed, and the Supreme Court had fixed a new date for the imposition of the penalty of death, saw fit to commute this sentence. The Governor was well and fully advised of every circumstance that indicated guilt, and yet to his mind the case in its result was a very unsatisfactory one, with features which appealed to him so strongly as to make the commutation of the sentence imperative. In this decision the Governor was justified by many things that were brought to his attention, each one standing alone of so little moment, perhaps, as

to have no place as, or to rise to the dignity of, evidence in a trial. Our present Governor went further, and following the course inaugurated by his predecessor in interfering in the management of the prison, Governor Lowden directed that the prisoner be removed from Joliet, and that he serve out his life sentence in the Chester Penitentiary, which is located in the extreme southern end of the state.

In contemplating these instances which have been given of the peculiar workings of the law as to the death penalty in the State of Illinois, one is impressed with the thought that chance plays too important a part in the matter of verdicts and in the eventual decision as to who shall be hung and who shall not. Further it suggests to the speaker, with his known insistence at all times on the punishment of the guilty, that the present law is not an aid to the administration of justice, and does not tend to bring about a reverence and respect for law and faith in its justice and fair dealing.

It is respectfully urged that in this age of humanity there should be some better solution for the problem of the just punishment of the guilty, and in this connection we assert that the working of the law in those states where the death penalty has been abolished is much more satisfactory than in Illinois. Surely in these other states justice moves more swiftly, punishment is more certain, and law and order are as well, if not better, maintained than in Illinois, and we submit that this survey shows strong justification of the action of a majority of the representatives in the Fiftieth Assembly in voting to change the present punishment imposed for the crime of murder.

THE DETECTION OF THE POTENTIAL CRIMINAL¹

A. WARREN STEARNS²

Many factors tend to give individuals a more or less definite position in the scale of humanity. Some of these are good health, great energy, and the fortune of birth, but perhaps most important of all is well-balanced intelligence. So that families which are continuously producing good brains will usually be found near the top of the scale, while those continuously producing poor brains will gravitate toward the bottom. At the very bottom of the social scale is found a small number known as the dependent class. Individuals in this class are unable to compete with the rest of the world because of some handicap. They are supposed to constitute about two per cent of the population and are dependent upon the other ninety-eight per cent for maintenance. Formerly we were content to divide this dependent group very roughly into three classes: the sick, who for ages have been recognized and given more or less adequate scientific attention; the poor, who have been considered worthy of charity and so aided; and, lastly, the bad, who have always been considered as outside the pale, not only of human kindness but of human study, and have been dealt with as if there were some element within them which wanted to oppose the will of the majority, and as if that element could only be repressed by wreaking vengeance upon these individuals when they were caught. The longer we study sick people, the more we realize that disease is usually of a specific nature, until now we recognize innumerable mental conditions, each one having a definite cause and running a definite course, and, most important of all, calling for a definite form of treatment. As important as is kindness and sympathy on the part of the physician, more important still is his ability to name and so classify the disease process and then prescribe the orthodox treatment. There is every reason to suppose that the same sort of study and classification of the other unfortunate classes, the poor and the bad, will give similar results.

¹An address given before the State Conference of Social Agencies at Santa Barbara, California, on April 19, 1918, and before the Berkeley School for Police on April 3, 1918.

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Crime has been said to be due to economic necessity, and theories for its prevention have been based upon a supposition that society was so improperly organized that certain individuals were driven to commit crime, it being supposed that society was discriminating against them. A more proper viewpoint, it seems to me, recognizes the same situation but places the defect in the individual rather than upon society. In other words, we find that certain persons because of a handicap, either educational or physical or mental, are unable to compete with their better equipped fellows, and for that reason adopt various short cuts and makeshifts known as crime. As to crime itself, no definition is applicable to all conditions in all places. There is almost no crime which is not perfectly proper somewhere in the world. Recently it has been customary to classify crime according to the motive which prompts it into three groups. First and of most importance is the group due to the acquisitive instinct. It is perfectly natural for us to want to acquire property, to see things belonging to others which attract us and which we wish to have. Therefore, to steal these things would be a response to a perfectly natural instinct. However, society has become so complex that we can no longer take things which we see and want, but it is insisted that we conform to social rules and regulations and take only those things to which we have a legal right, and so any attempt to curb the acquisitive instinct in man is an attempt to make the individual conform to social necessity. The next, but much smaller group has to do with the procreative instinct. It is perfectly natural and one of the most fundamental principles of all life that it shall reproduce its kind, and so it is natural that an individual should have an active sex interest. In primitive times it was not necessary to curb this, but society is now so constituted that the individual must curb his instinct for the common good. Various lands have various sex customs, and each one insists upon conformity to its social regulations. The individual who does not conform is considered a criminal. The last group, also small, has to do with the pugnacious instinct. Whenever two animals meet there is an instinctive challenge. The same is to a less degree true of human beings. Society has formed certain rules by which we can compete legally, and although custom varies in different localities, a deed of honor in one country being second degree murder in another, any variation from the local standard is considered criminal.

From the foregoing, then, it appears that all crime is due to the operation of perfectly natural instincts, that social conditions have necessitated the control of these instincts, and that any departure is

merely lack of conformity to social necessity. Thus, the criminal appears to be merely a non-conformist.

Two questions must be asked in determining the causes of this non-conformity. First, what social conditions exist today which place the individual at a disadvantage so that he is more apt than his fellows to commit crime; and, next, what personal characteristics in the individual help to explain his anti-social conduct. The social problems are only indirectly related to psychiatry and so will not be especially discussed in this paper. Among the most prominent may be mentioned the sale of alcohol under Government license. Of 176,000 arrests in Massachusetts in 1916, 104,000 were for drunkenness, therefore the social custom of drinking may be considered to be responsible for a great deal of what is ordinarily known as crime. Next, environmental factors during childhood, crowded tenement life, unemployment, etc., need further investigation.

Now, as to individual peculiarities. About one in thirteen of the English population, according to Goring, gets into prison at some time during his life. In Massachusetts about one in twenty-five gets arrested every year, and about one in two hundred goes to prison every year. Of those who are sentenced to prison, about sixty per cent have had previous terms. It has been noted that those who have had one previous term have usually had several. In other words, certain types of individuals seem to be prone to commit crime, and it is a study of this group, constituting something like one-half of all who are sent to prison, which concerns the psychiatrist. Many examinations have been made of prison populations, and although this is more or less like autopsy work, it has served to throw light upon the characteristics of these offenders. Goring, from a very exhaustive statistical study of the English convict, states that but one physical characteristic appeared constant, namely, a generally poor physique; and that but one mental characteristic was constant, a generally poor intellect. Years ago Lombroso tried to isolate a criminal type by anthropometric studies. The parallel between his criminal man and our mental defective is readily seen. It appears, then, that in a large number of cases individuals getting into prison are handicapped by inferior or abnormal mentality. The old rule that honesty is the best policy is only apparent to the intelligent man having proper self-control. The abnormal individuals, then, are repeatedly doing things which are unwise as well as illegal. Therefore, all of these non-conformists fall into two groups: those who will not

- conform, and those who can not conform. Those who can not conform are, from a medical standpoint at least, irresponsible, and constitute about one-half of those sentenced to prison.

The most important group of criminals is the feeble-minded group. The child is socially a non-conformist. He has to be taught that he can not grab everything that he wants, and usually he does not understand why he has to learn the laws of society. Some children learn at one age, others at another; certain ones, whose brains never develop, never learn. Examination of these individuals shows every evidence of a childish intellect, and when the degree of defect is great enough and permanent, they are called feeble-minded. These individuals do the same thing over and over again despite correction. They do not know enough to earn their living honestly or to learn when they put their finger on the stove and find it hot never to repeat the action. They are attracted by the things which they want and do not look forward to the future, and so continually sacrifice future for present, not because they are vicious, not because they prefer being in jail, but because they do not know any better. This type of individual makes up between twenty and thirty per cent, roughly, of all those now in prison.

A word about diagnosis in this group. At the present time there are two schools advancing somewhat different ideas as to exactly what constitutes feeble-mindedness. On the one hand, the pedagogical school regards as feeble-minded those who grade below a certain age on some intellectual scale. Next, the medical school which regards as feeble-minded those who show certain rather specific characteristics of body, whose conduct and reaction are of a certain type, and whose intellect is inferior. Whereas from a statistical standpoint graded tests undoubtedly detect the feeble-minded, when one deals with individual diagnosis he must have facts which are of more differential value. Although it may be true that ninety per cent of all individuals with a temperature, a high blood count, and a pain in the right lower quadrant have appendicitis, it is necessary for the physician to have knowledge which enables him in a given individual to differentiate between acute appendicitis and several other conditions, before operating. Likewise, while it is true that the vast majority of individuals grading a certain number of years below their chronological age are feeble-minded, it is necessary for the physician to be familiar with other qualitative facts concerning the individual before he is justified in making a diagnosis of feeble-mindedness. This is especially true in dealing with criminals, because among the feeble-

mind the smaller the degree of intellectual inferiority, as measured by graded tests, the greater the potential criminality. Every feeble-minded child is a potential criminal, but if he can have the proper training as given in schools for the feeble-minded, rather than the education which he gets from associating with street hoodlums and other criminals, there is much smaller chance of his being a social problem when he grows up.

The next to be considered are the abnormal personalities. Certain individuals who are neither insane nor feeble-minded lack the proper mental balance which enables them to think clearly, control themselves and act wisely. These have been called by various people different names, such as moral imbecile, constitutional inferiority, constitutional psychopathic state, and psychopathic personality. The variety of names shows a lack of specific characteristics, and often these diagnoses are based almost entirely upon what the examiner thinks the criminal conduct of the individual means mentally rather than upon objective findings by examination. Dr. H. M. Alder has divided these abnormal personalities into three classes: the inadequate, the emotionally unstable, and the paranoid. The first of these have a generally inferior brain, intelligence enough so that it is not proper to class them as feeble-minded, but so incapable that they are unable to hold a job and to get along without help, so that they very easily adopt the easy way which leads to crime. Next, the emotionally unstable. This individual may have a superior intellect, but he is emotional and forms most of his judgments as the result of his emotional state. He feels sorry for what he has done as soon as the storm is over, but is unable to prevent a recurrence when a similar situation is met. He is subject to outbreaks resembling hysterical attacks, and is unable to adapt himself to life. Lastly, the paranoid, the man, with a chip on his shoulder, with an "anti-social grudge," who feels that the world has treated him unjustly, who quarrels with his fellow workmen, employers or wife, and so is likely to be unsuccessful.

This group of abnormal personalities forms a very troublesome one from the legal standpoint, for, although their abnormality is definite enough so that we readily explain their crime by it, we are not willing as yet to excuse their misconduct as we do in the case of the insane or feeble-minded. They are particularly susceptible to the evil influences of alcohol and drugs, their lack of inhibition makes them acquire these habits easily, and prevents a cure in most cases. The condition can usually be recognized during childhood, being characterized by disciplinary difficulties in school, hysterical tantrums, wilfulness, and dishonesty.

The next group is the definitely insane, and most important among these are cases of chronic dementia praecox. These individuals, usually between fifteen and twenty-five years of age, commence to show mental deterioration. They become more and more peculiar, and usually at some time in their lives are committed to institutions. They constitute about sixty per cent of all the insane living at any particular time. Frequently they get well enough so that their insanity is not obvious, and yet lack initiative and judgment to an extent that they are not able to properly support themselves, and so are found among the unemployed, the vagrant, and the pauper classes. While their disease can not be cured, they are capable of doing fairly well under supervision. Often a little personal attention or help will enable one of these individuals to be self-supporting. The parietic frequently shows gross conduct disorder and frequently commits crime, but his life lasts only two or three years and therefore he does not constitute a big factor in the criminal class. Manic depressive insanity, especially the excited phase, frequently leads to acts of violence or dishonesty. These individuals are usually recognized as insane and sent to an institution. The senile changes often lead to dishonesty or sex offenses in the individual whose life has hitherto been above reproach. No old man should be prosecuted until the matter of mental decay has been very carefully investigated.

Lastly, the epileptics constitute a small but constant percentage of our criminal class. Many are defective from birth, others dement soon after the onset of the disease. It is very difficult for an epileptic to hold a job, and for that reason he is apt to resort to crime on account of this handicap. Occasionally in an epileptic frenzy deeds of violence are committed. While all epileptics are not insane, it is probably true that few are fully responsible for their acts, especially under provocation.

This, in general, constitutes the degree to which crime is explained by mental disease. The point in particular which I wish to make is that mental disease is a cause of crime, first of all, because it handicaps the individual, prevents his competing with his fellows on equal terms, and so makes him a victim of economic necessity to a greater extent than the average man; next, his inhibitions are so weak or weakened that he is unable to resist the temptation to choose the makeshifts and short cuts which lead to crime; and, lastly, that certain anti-social tendencies which he may have, form a positive force tending toward the commission of crime.

WAR LEGISLATION AGAINST ALCOHOLIC LIQUOR AND PROSTITUTION¹

JOHN G. BUCHANAN²

It is my purpose to deliver a plain, unvarnished tale of the course of one phase of our war legislation. I bespeak your attention because I think that you may be most useful in furthering and rendering effective this legislation in your several states and communities. I realize that to many of you my remarks will convey but a slight amount of information, because their subject has been more or less in the public mind since early in the war—intimately related as it is to venereal disease, of all diseases the greatest cause of disability in wars, even, I regret to say, in the present one.

It has been said repeatedly that the three principal vices affecting an army are prostitution, drinking and gambling. There is a marked line of distinction, however, between the two former and the last in the matter of their effect upon the health of their victims. Doubtless for this reason gambling, while for aught I know it may come within the purview of *criminology*, has not, like prostitution and the furnishing of liquor to soldiers or sailors, been dignified by promotion into the category of *crime*.

Alcoholic liquor and prostitution were deemed by Congress of such importance in a military sense that sections with regard thereto were embodied in the Selective Draft Act of May 18, 1917, the charter, I may say, of the war army of the United States. By Section 12 of that act Congress authorized the President "to make such regulations governing the prohibition of alcoholic liquors in or near military camps and to the officers and enlisted men of the Army as he may from time to time deem necessary or advisable." The section also made it a misdemeanor to sell intoxicating liquor "to any officer or member of the military forces while in uniform," with exceptions not important to the purpose of this discussion. A violation of the section or regulations made thereunder was made punishable by a fine of not more than \$1,000 or imprisonment for not more than twelve months or both. Section 13 of the act directed the Secretary of War "during the present war to do everything by him deemed necessary to suppress

¹Address before the Annual Meeting of the Institute of Criminal Law and Criminology, at Cleveland, August 26, 1918.

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and prevent the keeping or setting up of houses of ill fame, brothels, or bawdy houses within such distance as he may deem needful of any military camp, station, fort, post, cantonment, training, or mobilization place," and also made it a misdemeanor to receive for immoral purposes any person into any place, structure, or building used for the purpose of lewdness, assignation, or prostitution within such distance of places under military jurisdiction as might be designated. For a violation of this section or regulations made thereunder the same penalty was imposed as in the case of the section relating to alcoholic liquor.

The provisions of these two sections were extended to the naval establishment by the Act of October 6, 1917, the Secretary of the Navy, with regard to places under naval jurisdiction prescribed by the President, being given powers similar to those previously given to the Secretary of War with regard to military camps and posts. The naval act is in one respect more satisfactory than the military act. The provisions of the naval act with regard to intoxicating liquor as well as prostitution apply to any place under naval jurisdiction prescribed by the President. The provisions of the army law on the liquor question relate only to "camps," that is, military establishments having somewhat of a temporary character, whether as to the kind of shelter for the men stationed there or as to the nature of their occupancy of the quarters provided for them. On the subject of prostitution all military and naval stations alike, permanent or temporary, come within the terms of the law and regulations.

As I have said, the Secretaries were directed by the law to take measures to carry out its purpose, and among those measures was included the appointment of a Commission on Training Camp Activities in both the War and Navy Departments. The experience of Mr. Raymond B. Fosdick in matters of this character, in particular as the representative of the Secretary of War to investigate conditions during the Mexican border campaign of 1916, indicated his choice to undertake the task, and he was made chairman of both commissions. Mr. Baker, as Secretary of War and also as Chairman of the Council of National Defense, on May 26, 1917, eight days after the passage of the Draft Act, sent a letter to the governors of all the states and the chairmen of the state councils, notifying them of the appointment of the War Department Commission, calling their attention to the pertinent sections of the law, and affirming unmistakably the vital interest of the army in the matter. On August 10, 1917, shortly before the opening of the large cantonments, the Secretary wrote to the mayors

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of all cities and the sheriffs of counties in their vicinity, reiterating the statement of the policy of the Department. He assured them that the existence of vice districts within an effective radius of the camps, even though too far away to be within the provisions of the federal regulations, would not be tolerated. In the early autumn of last year the work of carrying out the policy of the two Secretaries in the stimulation and co-ordination of the activities of federal and state officials in the enforcement of laws relating to alcoholic liquor and prostitution, so far as the army and navy are affected, was entrusted to a law enforcement division in the commissions of which I have already spoken. Surgeon General Gorgas, at the instance of Lt. Col. William F. Snow, General Secretary of the American Social Hygiene Association, because of the intimate connection of the work of this division with the greatest of the army's health problems, detailed to the army commission a number of non-medical officers of his staff, under the leadership of Major Bascom Johnson. In this manner a medium was provided for the furtherance by legislation and other methods of the war program on this subject.

It is to be noted that, with the exception of the case of the sale of liquor to men in uniform, the law has no effect outside of places under military or naval jurisdiction until put into operation by regulations made in certain cases by the President, in others by the Secretaries of War and of the Navy. Besides minor regulations on particular questions, there have been three successive sets of regulations relating to prostitution near military posts and the same number for naval stations, three sets of regulations relating to alcoholic liquors for the army and two sets of such regulations for the navy. The changes in these regulations are indicative of the progress made in the fight to maintain the efficiency of our military and naval forces. I shall, therefore, with your permission, trace them in some detail, treating first the question of alcoholic liquor, and then the question of prostitution.

The first regulations relating to alcoholic liquors for the army were issued on July 25, 1917. They dealt only with the situation within five miles of a military camp, and in the case of incorporated cities or towns within one-half mile of a camp. In the zone so described the sale, service, gift, and transportation of alcoholic liquor were forbidden, except to civilians in private homes. No prohibition of liquor to members of the military forces outside of the zones was put into effect by these regulations; so that beyond the immediate neighborhood of the camps men in the service could freely obtain liquor in any

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other manner than by a sale to them while in uniform, which was made criminal by the law itself. The President has under the law two powers, (1) to prohibit alcoholic liquors "in or near military camps," (2) to prohibit alcoholic liquors "to the officers and enlisted men of the army." By the original regulations he exercised the first power and made the "dry" *zones*; he did not exercise the second power and make a "dry" *army*. While the regulations applied according to their terms to any military camp, they were restricted by a regulation of August 16, 1917, to camps for divisions of the army, as distinguished from smaller detachments, to officers' training camps, and to a few other designated classes of camps.

Operations were conducted under these regulations for about half a year, the second set of regulations being issued on January 26, 1918. These marked a great advance over the situation as it existed under their predecessors. The President exercised his power to prohibit alcoholic liquors to the officers and enlisted men of the Army, even outside the zones around the camps. It was made a crime to furnish liquor to a member of the military forces, whether by sale or otherwise, anywhere, save in the single case of members or guests of a family in a private home not within any "dry" zone. The new regulation on this subject was most effective in dealing with "bootleggers," as to whom it often could not be shown that they were sellers of liquor, or anything more than messengers of the soldiers or sailors for whom they purchased it. The question under the new regulations was no longer one of sale, but the much simpler one of delivery. The regulations added a number of classes of camps to those previously included, but the change in this respect was one of accretion, not of reconstruction; and the matter was still in an unscientific state. Camps with thousands of men in training for line service had no "dry" zones around them, because a division was not stationed there; while small camps with men in training for certain of the staff branches had "dry" zones around them.

The first Navy regulations under Section 12 of the Act were not promulgated until March 5, 1918. They were practically the same as the Army regulations, except for two great points of difference. The Army regulations apply to every camp satisfying their terms; the Navy regulations specify only eight (now nine) naval stations—in other words, there are only nine naval "dry" zones. The naval zones are, however, of a uniform width of five miles; while the Army zones, as I have said, include in incorporated towns with state or local

license of the sale of liquor no territory which is more than one-half mile from the camp.

The third (and present) set of Army regulations was made by the President and the Secretary of War on June 27th last. They mark a second great advance and substitute for the somewhat empirical form of the earlier regulations a more logical scheme.

There is now, or should be, a "dry" zone around every military camp where not less than two hundred and fifty men have been stationed for thirty consecutive days. If you know that the sale of liquor is still being carried on within the prescribed distance of such a camp, inform the United States Attorney and ask him to take action. Inform also the Commission on Training Camp Activities, and it will add the weight of the War Department's request to yours. Sometimes the question, "Is this post a camp?" is not a simple one, and before proceeding to destroy in the public interest businesses with large investments there have been delays until the United States Attorneys could obtain rulings from the Attorney General.

The new regulations make one other notable change. They make the Army "bone dry." None of you gentlemen, even in the privacy of your own homes, may give me a drink of intoxicating liquor, including beer, ale, and wine, without becoming a criminal.

The Navy Department regulations issued on the sixteenth of this month, to go into effect on the thirtieth, similarly provide for a "bone dry" Navy. In that Department, however, the policy has been retained of establishing "dry" zones, five miles in width, around certain specified naval stations, the number to be added to only as conditions demonstrate the advisability of such action. If you live in the neighborhood of a naval station where you think conditions peculiarly require the establishment of a "dry" zone, communicate to the Commission on Training Camp Activities your reasons for so thinking.

Let us turn now to the subject of prostitution, which is still more vitally important to the forces of the United States. It is, of course, one of the greatest problems of all times, and in many communities before the war presented the most flagrant exception to the enforcement of the law.

The first War Department regulations under Section 13 of the Draft Act, dated July 25, 1917, and the first Navy Department regulations, dated October 18, 1917, were to the same effect. They prohibited the keeping or setting up of homes of ill-fame within five miles of any military or naval station. It is a significant proof of the value

of this section of the Draft Act that it appears strange now that only keepers of brothels were dealt with by these regulations. So successful has the Government been in the elimination of "red light" districts, both under the federal law and by inducing action by states and municipalities, that it is a little difficult to realize that a year ago these places constituted the overshadowing menace to the health and efficiency of the forces of the United States.

As progress was made in abating the known breeding places of vice and disease, the shameful commerce which had been driven therefrom took refuge as far as it could in a more precarious *modus vivendi*. To meet the new situation and to combat better the clandestine business which always exists outside the restricted districts, new regulations were made by the Secretary of War and the Secretary of the Navy on January 17, 1918. These regulations employed to the utmost, within five miles of all military posts and naval stations, the powers granted to the Secretaries by Congress. They aimed at the suppression of all lewdness in "any place, structure, or building," and the Attorney General directed prosecutions for offenses committed in any "place," giving that word its usual signification in spite of its juxtaposition to the narrower terms "structure or building." In particular the regulations prohibited directing, taking, or transporting for immoral purposes, and so brought under the ban of the law the nefarious activities of taxicab drivers and other procurers of lewd women, now rendered harder to find by being expelled from their former tolerated resorts.

You will have observed that the Act of Congress somewhat confined the scope of the regulations. It referred throughout to places, when the evil aimed at was a practice. The defect was remedied by Chapter XIV of the Army Appropriation Act of July 9, 1918. By it the powers of the Secretaries were extended so that they could suppress all prostitution within a reasonable distance of military and naval stations.

I confess that I could wish that Congress would go further still. Under the liquor law it is a crime not merely to supply liquor within the zones around the camps, but to supply liquor to a soldier or sailor anywhere in the United States. Why handle more gingerly the graver danger? Why not make it a crime to commit fornication with a soldier or sailor anywhere? Some of the state legislatures have made it a felony for a woman, knowing herself to have an infectious venereal disease, to engage in sexual intercourse with a member of the military or naval forces. But there is in the way the natural

hesitation of a jury to brand the woman as a felon, and there is the *scienter* to be proved. We have Year Book authority for it that "the devu knoweth not the mind of a man"—how much less of a woman! When medical examinations show that eighty to ninety per cent. of the prostitutes arrested during the war have one or more venereal diseases, and the so-called "charity girl," pursuing the avocation for erotic, not meretricious, reasons, is even more notably a disease carrier, I submit that the federal law, in cases where soldiers and sailors are concerned, should make up for the deficiencies of those state laws which do not punish fornication.

But this is a digression. What is the present law? Secretaries Baker and Daniels on the third day of this month issued regulations to suppress all prostitution and the aiding or abetting thereof in any way within *ten* miles of any military or naval station. The doubling of the width of the zone of course increases its area in geometrical progression. No vested rights were disturbed by the extension of the zones under this section of the Act. The extension made them include many cities which were distant between five and ten miles from large camps. It was not because of flagrant conditions in these cities that the zones were extended. Prostitution is a hydra; however repressed, it will still to some extent continue in our day at least. If the arm of the federal, as well as the state, law is ready to strike at it, it is less likely to show a head in the neighborhood of military and naval stations.

I shall trespass upon your patience but a little longer, though I have told but half the tale, and that the more obvious half. This nation is based upon a union of sovereign states; and in spite of the great war powers of Congress and of the President there is much legislation, useful in the prosecution of the war, that can be more scientifically and more satisfactorily enacted by states or municipalities than by the Federal Government. Even in the part of the field covered by Sections 12 and 13 of the Draft Act, it has sometimes been found desirable to supplement the federal regulations. These regulations are made to meet the usual situation, and state or local enactments, based upon the will of the representatives of the very community in question, are often best for particular cases. The Secretaries of War and of the Navy have recognized this, and through the Commissions on Training Camp Activities have advocated successfully the passage of a very large number of state laws and a still larger number of municipal ordinances. While it would be a task not possible of accomplishment within the limits of this address to analyze

this legislation or to indicate the differences in various localities *nominatim*, I shall briefly state the character of the more common instances of it.

State legislatures have passed laws establishing around camps and other places where war work is being done "dry" zones of a greater extent than that prescribed by the President. Municipal councils have aimed at the "bootlegging" evil by prohibiting the sale at retail of liquor to be consumed off the premises of the seller, or surrounding it with safeguards to prevent its ultimately reaching soldiers or sailors. Frequently like action has been taken voluntarily by associations of liquor dealers.

In the matter of prostitution far-reaching state and municipal legislation has been enacted. The importance thereof cannot be overestimated. Five-sixths of the cases of venereal disease in the military forces in the United States were contracted before the patients entered the Army. To reduce the loss of time precious for training purposes, to relieve the strain upon the men and resources of the Medical Department involved in the necessity of treating these infected draftees, something must be done to attack the trouble at its source throughout the entire country, and not merely in the neighborhood of military posts.

Accordingly, nearly every legislature which has met this year in a state not already having the so-called Injunction and Abatement Law on its statute books has enacted such a law, giving to any citizen the power to maintain a civil proceeding to close a house of prostitution. State legislatures and municipal councils have passed laws and ordinances regulating lodging houses with a view to prevent assignation and prostitution therein. Upon many statute books and ordinance books have been written for the first time adequate laws to punish the solicitation for immoral purposes which once disgraced the city streets and the automobile business which enabled the persons plying the trade to disgrace the country lanes.

The method of this legislation I cannot go into now, but I will say merely that it has often employed to good effect the plan of making a license to carry on business revocable in case of a conviction for violating the law.

I do not mean to convey the idea that this legislation can be expected completely to put an end to the cause of venereal disease and so eradicate the disease itself. The War and the Navy Departments have been deluded by no such mirage. And so, *pari passu* with the

legislation which I have mentioned, the Surgeons General of the Army, the Navy, and the Public Health Service have induced legislatures and boards of health to make cases of venereal disease reportable and quarantinable in the same manner as cases of other communicable diseases.

Untiring endeavor has been put forth to make all this legislation, both federal and state, effective; and a very natural result has been that large numbers of persons, mostly women, formerly at large, have been restrained of their liberty by the action of police and judicial and health officers. The places where they might be confined and their diseases might be treated proved inadequate, and many states and communities concerned were unable financially to cope with a problem thus suddenly thrust on them for their own good and the Army's and Navy's good by the Federal Government. The Commission on Training Camp Activities, which was already to the extent of its power, with the Red Cross and the Public Health Service, taking care of these delinquents, obtained last spring from the President's emergency fund an allotment of \$250,000 to aid the states to establish detention houses near the camps and state reformatories for women. The Army Appropriation Act of last month, besides appropriations amounting to \$3,100,000 for other means of combating venereal diseases, provided \$1,000,000 for this particular work, of which Mrs. Falconer will speak to you with more authority and at greater length and in better fashion than can I.

A rational being can hardly give his adherence to Pope's dictum that "whatever is right;" and it may be that some here will not let this legislation pass without a challenge as to its value.

I would remind such persons that it is becoming increasingly apparent that this war will be won by man power. Our Army before the war would admit no man suffering from venereal disease. Such a rule is impossible now. Omit from the venereal disease statistics of the Army the cases contracted before entering the service, and the percentage of non-effectives from the greatest cause of disability among men in training is now only a very small fraction of the percentage before the war. Is that worth while? But let us go further. Not only will the war be won by *man* power; it will be won by *man power*. Morale has somewhat to do with the decision of battles and the fate of nations. Permit me to ask you to go back in your minds to the dark ages—let us say, two years since. Conditions around the camps on the Mexican border in 1916 were deplorable, disreputable. But there was one exception. Major General O'Ryan, commanding

the New York National Guard, would tolerate no vice in the vicinity of its camp. Not only was the health of his men markedly superior to that of other contingents, but there was an *esprit de corps* among them which could not escape the observer, and which was summed up in their own proud comment, "We are a clean bunch." "Clean bunches" are being sent to General Pershing on every transport, and who will say that they are not the better fitted to save democracy, in spirit as well as in body, because one hundred vice districts have been abolished and many another precaution has been taken to send them over as "clean bunches"? *Mens sana in corpore sano.*

I am firmly convinced that no other policy will produce the most effective forces for land and sea and sky—an Army and a Navy which shall renew their strength; which shall mount up with wings as eagles; which shall run, and not be weary; and which shall walk, and not faint.

CHINA'S FUTURE OPIUM EVIL PROBLEM

ALBERT J. WEBER¹

[Since this article was sent to the printer there has appeared in the public press a news item what purports to be a cablegram to the Chinese legation at Washington, D. C., from the Chinese Government dated Pekin, as follows:

"Fourteen million dollars worth of opium purchased by the Chinese Government from foreign opium merchants at Shanghai is to be totally destroyed by fire by government order."

As far as our knowledge extends no verification of this item has been received.—EDS.]

It may be desirable at the outset to remind the clientele of the Journal of Criminal Law of the magnanimous spirit of our American government, in setting a most excellent example to civilized nations in endeavoring to save men from narcotic drug addiction.

Because we realized the magnitude of the problem, and that a sacred duty was absolutely imperative to carry out American ideals of humanity, and because we were confronted by the pathetic struggle and most lamentable suffering of the Chinese multitude, the American government, solely on its own initiative, caused to be convened an International Opium Commission which met for serious deliberation at Shanghai, China, from February 1st to February 26th, 1909. This action our government took on the strength of its sincere determination to eliminate the oriental opium evil.

This commission did some preliminary good work, but the American government later on, after its review, found it necessary as a wholesome movement and further consecrated to a holy zeal, to initiate another International Opium Conference which was held at the Hague, Holland, from December 1, 1911, to January 23, 1912.

At both these important conferences, representative delegates were appointed by their respective governments representing Great Britain, The Netherlands, France, Germany, Austria-Hungary, Italy, Japan, China, Persia, Russia, Siam and Portugal.

¹The Foreman of Grand Jurors, United States of America, for the Southern District of New York and New York County Grand Jurors, who has for many years officially investigated illicit opium and heroin traffic, and an authority on opium, morphine and its alkaloids.

The President of the United States appointed the Very Right Reverend Charles H. Brent, D. D., Bishop of the Philippine Islands, as the American plenipotentiary delegate to both conferences. He was at both conferences unanimously elected by the delegates as its president and presiding officer.

The Hague conference was to give force of law and international agreement to the proposals contained in the resolutions of the International Opium Commission which assembled at Shanghai, China, 1899. That government accordingly put forward the following tentative program for discussion by the conference: The advisability of effective national and international laws and regulations to control the production, manufacture and distribution of opium, its derivatives, and preparations, and advisability of the restriction and control of the cultivation of the poppy.

On September 20, 1906, an imperial Chinese edict, signed by the Emperor, was issued prohibiting the cultivation of the poppy and the further use of opium throughout China for a stated period of ten years. Also it positively prohibited the importation of opium from British India for a term of ten years.

Now, however, comes the astounding and most startling news as contained in recent cablegrams from Peking, Shanghai and London, as chronicled in the public press spelling China's resurrection of the opium trade, in that the Government of the Republic of China had bought outright in British India all of the opium that was obtainable for the beneficent sum of £3,000,000, or \$15,000,000, payable in Chinese Government bonds to be liquidated at the expiration of ten years.

In further connection therewith it is cabled that certain high government officials thereupon formed an extensive syndicate for the exclusive control and disposition of this British Indian opium so purchased. A clever bit of astute mongolian camouflage was resorted to by this syndicate in that it was solely organized to operate under a mask as an anti-opium society which was infinitely spurious. Whereas in former years during the existence of the Chinese Empire, these legitimate anti-opium societies composed of high class Europeans and Chinese citizens, did heroic work in that they continuously waged vigorous crusades and their titanic opposition towards the opium evil was most remarkable, in force and effect. It is authoritatively agreed and ordained that this new modern "society" shall sell opium to all patients suffering from narcotic drug addiction, that distressing disease. The Government of the Chinese Republic has bound itself by the recent articles of agreement entered into and subscribed to at

Shanghai, to sell all the purchased British opium, viz: at 6,200 taels per chest to this new officially formed syndicate at 8,000 taels per chest. The general public will, of course, be charged stiff opium syndicate prices that will permit enormous profits to accrue to the esteemed uniformed gold-laced officials.

The Chinese tael is a unit of weight and equals 583.3 grains of one and one-third ounce avoirdupois. The tael is not a coin. The customs unit is the Haikwan tael as circulated in the Chinese Haikwan Province, and its intrinsic value in terms of the United States money is \$1.20. The value of other Chinese taels are based on their relations to the value of the Haikwan tael. The Shanghai tael in United States money is \$1.03. Silver is the legal Chinese standard and the Yuan Chinese silver dollar of hundred cents is the monetary unit of the Chinese Republic; it is equivalent to 0.644—of the Haikwan tael.

Now what China had agreed through its authorized delegates, at these opium conferences, binding itself to abolish the cultivation of the poppy, its production, distribution and control of opium as well as the stoppage of the importations from British India of all opium, is apparently negatived.

I want to warn, however, against too hasty adverse criticism and judgment of the action on part of the Chinese Government, for I realize that perhaps there may be motives and reasons underlying this action which are the result of practical Chinese experiences and revelations in attempting to control narcotic drug addiction solely by certain legislation and official administration.

It is now recognized that our own experience, State and Federal, in the attempted control of narcotic drugs and their use, purely by extremely restricted laws, has failed in great measure for the purposes for which these laws were enacted, and that some of the worst evils of narcotic drug usage have grown very rapidly and thrived more than ever since our laws went into effect. It is also rapidly being recognized that our laws and their administration must be modified, in view of the newer conceptions of narcotic drug addiction advanced during recent years by such authorities as Doctor Ernest S. Bishop, clinical professor of medicine, New York Polyclinic, and Doctor George E. Petty and other scientific and clinical men who have given their undivided attention to the subject matter.

My personal perusal for an extensive period of such authoritative papers as those written by Professor Bishop on *Narcotic Drug Addiction and Fundamental Considerations of the Problem*, have absolutely demonstrated to me that we are now only in our infancy of under-

standing of the narcotic drug addiction problems, and that many considerations and newly discovered scientific facts, unknown and unsuspected at the time of the Opium Conference in 1912, will have to be recognized and dealt with in any future comprehensive and intelligent handling of the narcotic drug matter.

The wide scope and various character of the voluminous testimony adduced upon all sides of the narcotic drug problem by the Whitney Joint Legislative Committee of New York State in New York City in January, 1918, has given us great food for consideration and many conditions and facts which must be further discussed, debated and applied practically in the handling of the narcotic drug conditions confronting us, and the value of Christian wisdom in solving it.

INDETERMINATE SENTENCE, RELEASE ON PAROLE AND PARDON

(Report of the Committee of the Institute¹)

EDWARD LINDSEY, Chairman

No new indeterminate sentence act has been passed by the legislature of any state during the past year nor has there been any change or amendment to such acts as are now in force. But few changes or amendments have been made to the parole acts. Comparatively few legislatures met during the current year, the larger number of states having biennial sessions of their legislative bodies. It would seem, however, that the fact of the country being at war, and that because of war, unusual conditions prevail, has caused a quite general feeling that the time is inappropriate for change or experiment in the criminal laws. In New York an amendment to the indeterminate sentence act of 1915 was introduced but did not pass. In Rhode Island, which has a parole system but not the indeterminate sentence, an act providing for indeterminate sentences was introduced but not reported out of committee and we are advised that one reason was that the administration of the act would require the creation of a new office, a parole agent, and it was thought inadvisable to add to the salary list at the present time. Allowing, however, for the sentiment that change is inadvisable under war conditions there seems to be a strong tendency in those states that have already passed indeterminate sentence or parole acts to observe the operation and effect of those acts for a time before further experimenting. Thus in Rhode Island we are told that the main reason for not pushing the proposed indeterminate sentence bill was that it was considered better to test the operation of the parole act of 1915 for a while longer than to launch another experiment at this time. The few changes that have been made are as follows:

Arizona

In Arizona the indeterminate sentence and parole act of 1911 has been amended. The most notable change, we are advised, is the creation of a new Board of Pardons and Paroles, which consists of

¹The personnel of this committee was as follows: Edward Lindsey, Warren, Pa., Chairman; Frank L. Randall, Boston, Mass.; Edwin M. Abbott, Philadelphia; Edith Abbott, Chicago.

the attorney general, the superintendent of public instruction and a citizen member who acts as chairman. The board has power to recommend paroles, commutations and pardons to the governor. We have not yet been able to obtain the text of the amendment, but attach in the appendix to this report the answers to our questionnaire which we have received from the parole clerk covering the law as amended and now in force for comparison with our report for 1912.

Georgia

In Georgia we are advised by our correspondent that while there is no indeterminate sentence act, there was a parole act passed at the extra session of the legislature of 1908, which had been overlooked and not heretofore reported to us. This act confers authority upon the Prison Commission "to establish rules and regulations under which prisoners within the penitentiary may be allowed to go upon parole outside the confines of said penitentiary, but to remain within the legal custody and under the control of said Prison Commission and subject at any time to be taken into custody on order of said commission." The act provides that no parole or conditional pardon shall be granted any prisoner until he shall have served at least the minimum sentence fixed by law as punishment for the crime of which he was convicted; no parole, however, may be granted to any prisoner serving a life sentence for treason, arson, rape or assault with intent to rape, nor to any prisoner serving a life sentence for any other crime until he shall have served at least ten full years under his sentence. The commission has power to prescribe rules and regulations under which applications for parole or conditional pardon shall be made and heard and also the terms and conditions of the parole. The parole is granted by the governor on the unanimous recommendation of the commission if he approves of the same. The prison record of the prisoner and his history before the conviction for crime must be considered by the commission, and before recommending a parole it must have satisfactory evidence that if released the prisoner will be given honest employment with a good home and that if he is unable to work he will not become an object of public charity. The prisoner may be arrested at any time upon order of the commission, which order has the force of a criminal warrant, and returned to the penitentiary to serve the remainder of his original sentence, in the calculation of which the time paroled may or may not be counted in the discretion of the commission.

The act further provides: "That after said paroled prisoner shall have served at least twelve months of his parole in a satisfactory manner and together with his history before the commission of the crime for which he was sentenced, and his prison record, shall have thereby convinced said Prison Commission that he is worthy of being restored his citizenship, and that he will not again commit crime and his final release is not incompatible with the safety of society, said commission may, upon its own motion, after having so made diligent inquiry and investigation, recommend unto the governor that said prisoner be fully pardoned and his citizenship restored unto him, and if said recommendation is thus approved by the governor, a full pardon shall be granted upon executive order. That, unless said Prison Commission, upon its own motion, without outside interference or suggestion, make said recommendation for a full pardon, the said prisoner shall serve out the full term of his sentence as a paroled prisoner. It shall be the duty of said commission to keep in touch with said paroled prisoner and require him, by suitable rules, to report himself to said commission at such stated periods as will enable the commission to ascertain his record while a paroled prisoner." Further details of the system may be found in the appendix.

Louisiana

Louisiana, in 1916, repealed her original parole law and passed an act providing for indeterminate sentences applying to all persons sentenced to imprisonment in the state penitentiary or at hard labor otherwise than for life, or where the maximum term does not exceed one year, or persons convicted of treason, arson, rape, attempt to commit rape, crimes against nature, bank and homestead officials misusing funds of depositors, notaries public who are defaulters, train-wreckers, kidnapers and dynamiters. It is the duty of the trial judge to impose an indeterminate sentence, "the minimum of which sentence shall not be less than the minimum term of imprisonment fixed by the statute under which such person shall have been convicted and the maximum not more than the maximum fixed in such statute; provided, that where no minimum term is fixed in such statutes said minimum term shall be taken and intended as being one year." A companion act was passed at the same session to provide for the parole of prisoners sentenced under the indeterminate sentence act. A Board of Parole was created to consist of three members to be appointed by the governor. This board has power to determine when and under what circumstances a prisoner sentenced to an indeterminate sentence

shall be paroled. The act provides that the parole board shall appoint a parole officer for each congressional district of the state who shall serve without compensation and adopt a uniform system for the marking of prisoners "by means of which shall be determined the number of marks or credits to be earned by each prisoner as a condition of release on parole and such other regulations as may be necessary for the carrying out of this act." Each prisoner may, a month prior to the expiration of the minimum term of his sentence, make application to the board in writing for a parole. It is then "the duty of said Board of Parole, immediately upon the filing of said application, to enter into the investigation of the conduct of said prisoner during his term of imprisonment and if upon investigation it shall be found that the prisoner has, under the rules and regulations of said Board of Parole, become entitled to discharge from imprisonment upon parole, this board shall order the release of said prisoner from imprisonment at the expiration of the minimum term fixed in the sentence." If refused, the application may be reconsidered at any subsequent period not less than six months. It will be noted that the conduct of the prisoner during his incarceration is made the sole criterion of whether he shall be paroled or not and that by a rigid system of marks or credit, so that this whole parole system is nothing more than a reward for good behavior during confinement.

By a further section of the act amended and re-enacted in 1918, it is provided that the parole shall expire only with the expiration of the maximum term of imprisonment fixed in the sentence unless the Board of Parole shall, in its discretion, reduce the term thereof; that every prisoner paroled shall be required to promise to keep the peace and be of good behavior until the expiration of his parole and for violation thereof the parole shall be revoked, "which revocation, placed in the hands of any sheriff, shall be sufficient warrant for the arrest and return of said paroled prisoner to the penitentiary there to serve out the whole term for which said parole was given, subject to the deduction of the time which he had served prior to said parole and to any commutation for good behavior that he shall thereafter earn." By act of June 18, 1918, it is provided that any prisoner eligible to parole under the act of 1916, may be paroled when he has served as much as one-fourth of the minimum term of his sentence, but not less than one calendar year, "and who has by particularly meritorious service and highly exemplary conduct earned and is entitled to additional or double commutation of time for diminution or reduction of sentence as provided by law."

Maryland

By act of April 10, 1918, the Maryland legislature provided that it shall be the duty of the Advisory Board of Parole "to collect all information that may aid it in determining the advisability of recommending to the governor the conditional pardon of any person sentenced under the laws of Maryland, and whenever said board shall, upon examination, be of the opinion that both the interests of the state and interests of any prisoner sentenced under the laws of Maryland would be best subserved by a conditional pardon it shall be the duty of said board to lay before the governor for his consideration these facts and circumstances which induced their conclusion in that respect. It shall be the duty of said board to investigate and to collect all information that may aid it in determining the advisability of recommending to the governor the conditional pardon of all persons sentenced for one year or more to the Maryland penitentiary or to the Maryland House of Correction upon the expiration of one-third of the term for which each of such persons has been sentenced. And such investigation shall be made by the said board of its own initiative without the necessity of any application by or on behalf of any of such persons. It shall be the duty of the governor to act upon the same within sixty days after the receipt of any recommendations from the Advisory Board of Parole." By another act a salary of \$1500 per annum is provided for members of the parole board and they may appoint a secretary at \$1500 salary, and not more than four parole officers at not to exceed \$1200 salary. Other persons to serve as parole officers, without pay, may be appointed by the board.

EDWARD LINDSEY,
EDWIN ABBOTT,
Committee.

APPENDIX

QUESTIONS

1. Who may be committed under the indeterminate sentence?
2. Provisions for maximum and minimum term.
3. Parole board.
4. Duties of parole board.
5. Regulations of petition or argument.
6. Prisoners eligible to parole.
7. Points considered in granting parole.
8. Conditions of parole.
9. What constitutes violation of parole?

10. System of arrest for violation of parole and fee attached thereto.
11. Penalty for violation of parole.
12. Conditions for final discharge of prisoners from parole.
13. How paroled prisoner is finally discharged.
14. Number of violations of parole.
15. Extent of parole system.
16. Number of prisoners now under parole.
17. Note. Miscellaneous remarks. Special provisions.

ANSWERS

Arizona

1. All persons convicted of felonies, except first degree murder, treason, and train robbery.
2. The trial judge has authority to fix minimum and maximum.
3. The attorney general, superintendent school instruction and a citizen member who acts as chairman.
4. To meet quarterly and consider applications for parole, commutation, or pardon. The board meets monthly.
5. Petitions may be filed and persons may appear before the board. Very few appear before the board in argument.
6. Every prisoner is eligible for parole after judgment has been rendered by the court.
7. Good conduct, efficient service, together with the recommendation of prison officials who feel satisfied the prisoner has acquired the necessary self-control to live a straight life.
8. Taboo drink, bawdy houses, and obey the law at all times.
9. Violation of the law, drinking to excess, etc.
10. Under warrant issued by any member of the board, parole clerk, or prison warden.
11. Revocation of parole.
12. By pardon or expiration of sentence.
13. As above.
14. Thirteen for the fiscal year 1918.
15. No answer.
16. On June 1, 1918, Arizona had 493 prisoners on parole.
17. No answer.

Georgia

1. No indeterminate sentence act.
2. No indeterminate sentence act.
3. State Prison Commission.

4. Prescribe rules under which applications for parole or conditional pardon shall be made and heard; examine and consider history of prisoner before commission of the crime and his prison record and report to governor with recommendation whether or not a parole or conditional pardon be granted; keep in touch with paroled prisoner and require him to report, and after twelve months if convinced that final release is not incompatible with the safety of society recommends on its own motion to the governor to grant a full pardon.

5. No answer.

6. Prisoners in state penitentiary, except those serving life sentence for treason, arson, rape or assault with intent to rape, after serving minimum term fixed by law for crime for which convicted, but all serving life sentence who are eligible to parole must serve at least ten full years.

7. Prison record and history before conviction for crime and satisfactory evidence must be furnished that if paroled prisoner will be given honest employment with a good home and will not become an object of public charity if unable to work.

8. Fixed by prison commission.

9. Not specified in act.

10. Prison commission may issue order for re-arrest of prisoner at any time, which order shall become a criminal warrant in the hands of any arresting officer in the state.

11. Service of remainder of original sentence and time paroled may be counted or not at discretion of commission.

12. Recommendation to the governor by prison commission on its own motion upon being convinced that paroled prisoner is worthy of being restored to citizenship and will not again commit crime, and that his final release is not incompatible with the safety of society. Prisoner must have served at least twelve months of his parole in a satisfactory manner.

13. By pardon by the governor or expiration of term of original sentence.

14. No answer.

15. Prisoners in penitentiary.

16. No answer.

17. No answer.

Louisiana

1. Any person sentenced to imprisonment in the state penitentiary or at labor otherwise than for life, or where the maximum penalty does not exceed one year, or persons convicted of treason,

arson, rape, attempt to commit rape, crimes against nature, bank and homestead officials misusing funds of depositors, notaries public who are defaulters, train-wreckers, kidnapers and dynamiters.

2. The minimum of the indeterminate sentence shall not be less than the minimum term of imprisonment fixed by the statute under which such person shall have been convicted and the maximum not more than the maximum fixed in such statute; provided that where no minimum term is fixed in such statutes said minimum term shall be taken and intended as being one year.

3. Consists of three members to be appointed by the governor.

4. To appoint a parole officer for each congressional district of the state; adopt a uniform system for the marking of prisoners by means of which shall be determined the number of marks or credits to be earned by each prisoner as a condition of release on parole, and such other regulations as may be necessary for the carrying out of parole act; upon an application for parole investigate conduct of prisoner during term of imprisonment and if it has been such as to entitle him to it to grant parole and to revoke any parole for violation thereof.

5. No provision for argument; prisoner makes application to board in writing.

6. All prisoners under an indeterminate sentence who have served the minimum term, or if any such prisoner has by particularly meritorious service and highly exemplary conduct earned additional or double commutation of time as provided by law, then when he has served as much as one-fourth of the minimum term of his sentence, but not less than one calendar year.

7. Good conduct during imprisonment.

8. Keep the peace and be of good behavior.

9. Not defined in act.

10. Revocation of parole by Parole Board, which in the hands of any sheriff shall be sufficient warrant for arrest.

11. Revocation of parole.

12. Discretion of Parole Board or expiration of sentence.

13. Pardon or expiration of term of sentence or reduction of latter in discretion of Parole Board.

14. Eleven to date.

15. See No. 1.

16. About 400.

17. No answer.

A CASE OF IDENTITY

WILLIAM RENWICK RIDDELL¹

The most extraordinary criminal case in many respects in Upper Canada was that of a person charged with crimes committed by William Townsend.²

William Townsend was born near Fort Porter, now Black Rock, in the State of New York in 1828. His father Robert Townsend was of good stock, being descended from Sir Roger Townsend,³ who landed at Plymouth in 1530. Robert, born in Massachusetts, came with his brothers to Buffalo during the war of 1812; he was a carpenter and shipwright and enjoyed an excellent reputation all his life. He married Mary Ann Wright, the widow of an American soldier who had been killed during the war along with her brother William Caskey at Fort Porter. The Caskeys were descendents of Joseph Caskey, a Church of England missionary, whose church was burned by the Indians; he escaped, to live a missionary for over fifty years.

Robert Townsend bought land near Fort Porter and there three of his children were born, William being the eldest. Then he crossed the international line and worked on the Welland Canal, taking part in building the docks at Port Dalhousie. Afterwards he bought land known later as the "May Farm," some two miles from Port Dalhousie, and built a house on it in which he lived with his family for a time. The frame work of the old Townsend house was still standing a few years ago. Selling out this farm, he bought some wild land between Canboro Village and Canfield, where he lived until his death in 1844.

When about thirteen William joined the government ship "Mohawk" as a helper in the galley, etc. Leaving the service in 1844, he helped on his father's farm near Canfield for two years dur-

¹Justice of the Supreme Court of Ontario, Toronto, Can.

²The facts of this curious case are taken from contemporary newspaper reports of the two trials, the official record at Welland, two contemporary pamphlets containing accounts, an article in the People's Press, published at Welland, January 19, 1915, on the "Townsend Gang," by "The Old Timer," and an answer in the same paper, May 25, 1915, by a "Niece of Bill Townsend," and material derived from private inquiry. I have tested the information and believe what is set out in the present article will be found accurate. The Judge's Notebook is not available; Mr. Justice McLean kept the notes of the civil and the criminal cases in different books and that containing the latter seems to have been lost. *Valde deflendus*.

³Sir Roger Townsend seems unknown to the biographers.

ing his father's last illness. On the death of his father in 1846, William joined the government ship "Montreal" as a "second-class boy"; he deserted in 1848, but rejoined the "Mohawk" in 1849, remained but three months and then again deserted when in Cleveland, because he had been ordered to paint the ship's bottom with red ochre. He had been entered in the ship's books as William Townsend, but was always known by the name "Little Davy Crockett"; his conduct is said to have been good while in the service.

After leaving the government employ, he worked on the farm, sailed a little, worked in saw mills, as a cooper, etc. He was not a good workman, but rather a jack-of-all-trades. He was also for a time a cab driver in Hamilton, drove the stage from Hamilton to Cayuga, and did some trading on the Welland Canal, but had no steady employment.

He was an apt mimic and could imitate many dialects: his great delight was to play the violin or tambourine and bones, to black up and sing and dance as a "Nigger Minstrel." He formed a Nigger Minstrel Troupe and gave concerts round the country. These seem to have pleased the people, as one lady swore she attended eleven of the entertainments; probably the art was not of a high grade, however. He does not seem to have fallen a victim to the then national vice of drunkenness,⁴ but in other respects he became depraved. With others he formed a gang of pickpockets and thieves operating in Hamilton and around Canfield; of this gang it is probable he was not the leading spirit; that place seems to have been held by one Lettice, an Englishman, who came to the Townsend place under the name of Anderson; there were also persons of the names of King, Blowes, Bryson, Patterson and Weaver, who seem to have made up the number of members.

While many depredations were committed, blood was not, so far as known, shed by the gang until October, 1854.⁵ On the Talbot Road, a few miles west of Cayuga, lived at Nelles' Corners, John Hamilton Nelles, a member of one of the most respectable families of Upper

⁴The "Niece of Bill Townsend" says, "Townsend's troubles commenced when he started going to a hotel in Cayuga—just as all young men do when they start drinking that awful curse whisky"—and she adds that on the night of Nelles' murder, "Townsend had been drinking," "Townsend's whiskey was talking"; but at the trials some who knew him well testified that he did not drink.

⁵After the murder of Nelles and Richards there arose memories of many other murders supposed to have been committed by the "Townsend Gang" or the "Notorious Bill Townsend." Bryson "the Queen's Evidence" swore at the first trial that Townsend told him that he had shot five men once in one house, "for dead men tell no tales"; but no other homicide than those of Nelles and Richards has ever been traced to him or his gang.

Canada and himself of high standing in the community. A knock came at the door in the night of October 18, 1854; Nelles first opened the door and then closed it; it was pushed open and five men entered. One said, "You are the scoundrel who shut the door in my face" and immediately shot Nelles.⁶ The robbers then took what money there was, also a gold watch; and opened a trunk in search for valuables. Nelles died in a few hours.

The gang fled; (they had committed several robberies on the same day). Blowes was caught in Hamilton in the house of one Mrs. Mary Ann Arno or Arnold, otherwise known as Limping Jenny, a lady whose reputation limped worse than her name; King was captured at his father's farm near Barrie, about 70 miles north of Toronto; Lettice was shot and killed by a constable on Squaw Island,⁷ when attempting to escape, and Bryson was taken in Hamilton.

Bryson, King and Blowes were tried at Cayuga for murder, and convicted; King and Blowes were hanged, while Bryson's sentence was commuted to imprisonment in the penitentiary for life. (See Note 12 post.)

Townsend first went home, then went to St. Catharines and probably to Buffalo and later concealed himself for a time at the house of his brother-in-law John Horn; at length on November 2nd he came out of hiding and made a break for freedom. Going with a man, who was afterwards identified as Lettice, toward Port Robinson they met Jacob Gainer, who had sold a load of wheat there, and robbed him of his money, Townsend telling him that he had shot a man at Nelles' Corners and needed the money to get out of the country. The two fugitives went on to Port Robinson and had dinner at the Jordan House. Gainer laid an information before Mr. James McCoppen, J. P.; he called Charles Richards a constable who went at once to the Jordan House, followed by McCoppen. Asking

⁶It is possible that the person who actually shot Nelles was Lettice (or Anderson), but the evidence points directly to Townsend; that Townsend killed Richards there never was any doubt.

⁷Lettice (as will appear below) went with Townsend when he made a break for freedom. The constables searching for Townsend along the Canadian border at Fort Erie, Bridgeburg, etc., heard that a man had been seen on the river bank. They took a small boat and rowed over to Squaw Island to see if he had gone there. They found a young man on the island, who ran from them; he refused to stop when called on to do so, and climbed upon a barn where he was shot by the pursuing constables. He was positively recognized as Lettice, but there always has been a doubt. One story is that Lettice died some years after in Chicago, having assumed the name of Townsend before his death. He is said to have stated that his real name was Anderson, that he had shot a man near Welland, and had robbed many stores in Ontario, etc. Such stories are not infrequent: it is not worth while here to discuss the truth of this.

Mr. Jordan if there were any strangers in the house, he was informed of the two who were there. When one of them came out of the bar, McCoppen entered into conversation with him and Richard, recognizing him as Townsend, laid his hand on him; Townsend turned around and said, "Let go of me or you are a dead man." Richard retained his hold and Townsend shot him dead and made his escape. A large reward was offered for the arrest of the criminals, including Townsend.

His immediately subsequent movements are not known; but a day or two thereafter he boarded a train on the Great Western Railway from Hamilton to Windsor. This fact was telegraphed along the line; and at Woodstock the sheriff and the gaoler with four assistants went on the train and found him. By most consummate assurance he lulled their suspicions, said he knew they took him for Townsend, but that he was a traveller from east of Rochester going west. He came upon the platform, talking easily and with a smile, and "jollied" them along until the train had acquired a good rate of speed; then he "darted away like a deer and leaped on the last platform of the last car." By almost incredible stupidity and ineptitude, the Woodstock authorities did not telegraph what had happened.

He was, it is believed, seen by an old schoolmate, George May, in Chicago, coming off the cars in the "fall of 1854." He asked May not to call him Townsend, giving a name with a "Mac" in it, and said he was on his way to New Orleans and from there to Australia or California. No information of this, however, came to the authorities till long afterwards.

The next heard of him was in August, 1855, when the sheriff at Rock Island, Illinois, thought he found him in the person of an actor in one of the "side shows" of Stone and Van Amburg's Circus and Menagerie; as he mentioned the fact *in confidence* to the proprietor of the show and the proprietor repeated it *in confidence* to the ringmaster, the fact was ultimately repeated *in confidence* to the suspected person, who promptly disappeared before a Canadian officer could arrive. It was believed at the time that he had gone to California by the Overland Route; but this was never verified.

The next act in the drama was played in Ohio. One morning in April, 1857, on the train on the Columbus and Cleveland Railway, leaving Columbus about 1:30 a. m., the conductor Knowlton found a man who had no ticket and no money to pay his fare, \$3.50. He told the conductor he had come from Nicaragua and offered his

Colt's revolver, fully loaded and freshly capped,⁸ as a pledge for the amount of his fare. The conductor *faute de mieux* took the pistol; and shortly after the arrival of the train at Cleveland, about 8 a. m., the passenger came to Knowlton's house for his pistol; but, as he had no money, Knowlton refused to give it to him. The man came back again, and Knowlton refusing to go with him to River street ("a rather disreputable place"), where he said he had a friend who would help him to "raise the wind," took him to a hotel kept by John Iles at 110 Erie street. Iles had previously lived in Canada and knew Townsend well. He was washing some tumblers when the conductor and his passenger came in; and he was so startled at seeing the man whom he took for Townsend that he let one of the glasses fall. Iles told him to go and get his supper, and he himself ran and informed the police. The man was arrested, later identified by witnesses from Canada and extradited.

During his six months' incarceration in the Gaol at Cayuga awaiting the Fall Assizes, he was visited by many of the friends and acquaintances of William Townsend, including his mother (Mrs. David Dewar), his stepfather (David Dewar), his brother-in-law (James B. Smith) and his sisters, Mrs. Smith and Francis Townsend, all persons of respectability. They all insisted that the prisoner was not Townsend. Many of Townsend's old acquaintances on the other hand were equally confident that the prisoner was Townsend; and the countryside was divided into two factions.

The prisoner was very reticent: he said his name was Robert J. McHenry, that he had come from near Glasgow, Scotland, and had

⁸To those who are accustomed to the breach-loading revolver with fixed ammunition it sounds odd to speak of a revolver as being "capped"; but in my early boyhood the revolver was muzzle loaded and had percussion caps.

Fixed or metallic ammunition came into fairly common use in the 60's. I used it myself in the "Remington four shooter" and single barrel as early as 1865, but the Colt revolver was not made for firing such ammunition until after 1870. The first U. S. Army Colt for metallic cartridges (called the 45 caliber Colt Army Revolver) was tested 1871 to 1874 before being adopted by the Army, and in this the chamber of the cylinder had to be loaded with cartridges one by one from the rear. This Colt was very much like the celebrated Colt Frontier, caliber 44, of which many hundred thousand were sold.

The Colt Navy revolver had cap and ball cylinders until the late 70's, when some of them were converted into metallic cartridge weapons. The modern Navy revolver with its cylinder allowing all the empty shells to be ejected in one act and reloading by a loading pack was adopted as late as 1889.

The late adoption of the metallic cartridge for Colt revolvers was due to the patents of Lindner (1854), Rollin White (1855), and Mayall (1860); but Colt made 65,000 Burdan rifles with such ammunition for the Russian government about 1868-1871.

been with Walker⁹ in Nicaragua; but he refused to give any further account of himself. He was perfectly confident of acquittal, retained no lawyer and subpoenaed no witnesses.

The Fall Assizes came round; a true bill was found against William Townsend for the murder of John Hamilton Nelles, the prisoner was arraigned under the name of William Townsend, and under that name pleaded Not Guilty, announcing himself ready for his trial without counsel or witnesses. This course astonished the Assize judge, Mr. (afterwards Chief) Justice McLean and the Solicitor General,¹⁰ Henry Smith, who was conducting the prosecution for the Crown. Fortunately for him, Mr. S. B. Freeman, an able and

⁹William Walker, "the last of the Filibusters," was born in Nashville, Tenn., May 8, 1824, of Scottish parentage. He became a doctor, lawyer and journalist, practicing medicine in Nashville and Philadelphia, law and journalism in New Orleans and in 1850 became editor of the *San Francisco Herald*. He also practiced law in California. In 1853 with a band of some 170 followers he invaded Lower California and Sonora (Mexico), but was driven out by Mexican troops. In 1855 he invaded Nicaragua, Central America, with 56 followers, and in 1856 he was elected president of that so-called republic. Defeated towards the end of the same year by the Legitimists of Nicaragua, assisted by the Costa Ricans, he went to Panama. After two attempts to recover the country, which were rendered futile by the intervention of the United States, largely at the instance of Vanderbilt, he ultimately in August, 1860, again invaded Nicaragua. Captured in September by Captain Salmon of the British warship *Icarus* he was delivered to the authorities of Nicaragua, tried by court martial and shot at Trujillo, September 12, 1860. His own work, "The War in Nicaragua," published in 1860, must be read with caution, but a very full and satisfactory account is given of this last and greatest of American filibusters in "The Story of the Filibusters," by James Jeffrey Roche, London, T. Fisher Unwin, 1891.

Assuming that the prisoner was the McHenry of Chips' Flats, California, as sworn at the second trial, it was not impossible that he had been with Walker in Nicaragua. The last account we have of McHenry at Chips' Flats is in October, 1854; Walker sailed from San Francisco for Nicaragua with the "Immortal Fifty-six" in the brig *Vesta*, May 5, 1855; and while it was not till May, 1857, that he left Nicaragua, some of his soldiers had already gone home disheartened with the failing fortunes of their leader.

But there were hundreds, even thousands, who claimed to have been "with Walker in Nicaragua," who had never seen him; many accounted in that way for an otherwise unexplainable absence from the view of their friends and there have been since that time as many "last survivors" of Walker's Expedition as of the "Light Brigade" of Balaclava fame.

¹⁰In the early times of the province the law officers of the crown, i. e., the attorney general and the solicitor general claimed the right to conduct all prosecutions for the crown and (incidentally) received the rather substantial fees for such services. But as the province became better settled and the number of courts increased, it was found necessary to retain other counsel; and gradually the law officers began to omit to conduct prosecutions. By the time of those trials it was unusual for either attorney general or solicitor general to take the crown briefs except in very important cases—the solicitor general in opening said: "The present inquiry is a most important one, so much so that the government have thought fit to request me to attend to conduct the case, although I am not in the habit of going the circuit." (Smith lived in Kingston.) There has been no instance for many years of a law officer of the crown taking a criminal prosecution—certainly none in my time, thirty-five years.

brilliant barrister of Hamilton, was attending the Assizes. After the arraignment, when the prisoner had been remanded for trial on the following day, a number of those interested in him spoke to Mr. Freeman; and he voluntarily undertook the duty of conducting the defense, associating with him Mr. Start, also of Hamilton, a barrister of good standing and great ability.

There was no difficulty in proving that Townsend had been present at the murder of Nelles and if not the actual perpetrator of the deed, was aiding and abetting; the sole defense was that the prisoner was not Townsend.

The prisoner was a man of about 5 feet 7 inches in height; his complexion was somewhat pale; his cheeks were thin, his face was elongated, but cheerful, his eyes large and of a peculiar light blue, his hair dark brown, and eyebrows of a lighter tint, not meeting over the nose, but well arched, his forehead large, heavy and somewhat high, his nose large, thick at the top and rather bent from the bridge downward. He had a scar above his left eyebrow about an inch long and inclining toward the temple, and another of the same size on his under lip; his chin was long and prominent, his cheekbones rather high and from the left cheek bone there was a large broad scar nearly three inches long and extending downwards. All witnesses agreed that he was thinner and paler than Townsend.

There was little difficulty in obtaining a jury, the Crown did not challenge, and the defense challenged only those who had expressed opinions and few from certain neighborhoods. (In an experience of thirty-five years I have never known it took more than half an hour to procure a jury in a murder case in this province.)¹¹

Bryson, who turned "Queen's evidence"¹² and who was brought from the Kingston penitentiary, identified the prisoner most posi-

¹¹There is nothing which more amazes an Ontario barrister in the practice of some of the courts of the United States than the extraordinary length of time taken in procuring a jury; we, a busy and poor people, could never afford the time. Every prisoner is allowed to have a copy of the jury panel four days before the sitting of the court, and is expected to have his objections ready; while we do not allow the examination of jurymen by counsel on either side.

¹²When Bryson was arrested he made a full confession; he was tried, convicted and sentenced to death at the same assizes as Blowes and King (his confession was not used against him). His youth aroused sympathy, and petitions were presented to the governor general by William Lyon MacKenzie, M. P. P. (the well-known rebel of 1837), Joseph Curran Morrison, M. P. P. (afterwards Mr. Justice Morrison), and many others; and apparently influenced by his youth and his frank and full confession, Bryson's sentence was, May 3, 1855, commuted to imprisonment for life.

While he was not called as a witness against King and Blowes, he was

tively, but gave the important evidence that Townsend wore earrings the nine months he knew him, that he wore them when he shot Nelles and took them out at Buffalo at the United States Hotel—there were no holes in the prisoner's ears or any indication that there ever had been. Another convict was equally positive, as were eighteen other witnesses, nearly all of whom had known Townsend well, including the captain of his Militia Company; and six thought him to be Townsend, but would not swear to the identity. This evidence took up the first day and part of the second, September 24 and 25, 1857.

During the first day the prisoner was allowed to wear his beard; but the Crown prosecutor ordered him to be shaved before the second day's proceedings began; at first the prisoner objected to this, but finally yielded with good grace.

The evidence of identity on the first day was general, but the second witness (Wait) on the second day deposed that Townsend had a scar from the joint of the large toe of the right foot to the ball of the foot; the prisoner's boot being removed, a scar, much such as had been described but a little smaller, was manifest. That Townsend had such a scar was sworn to by another witness who said it had been caused by a cooper's adze. The next witness (Brooks) described a scar above the left eyebrow of Townsend and pointed out to the jury a similar scar on the prisoner; the next witness corroborated this, as did four others. That Townsend had a scar on the lower lip like the prisoner was sworn to by only one witness—and he seems to have been unreliable; that he had a scar on the left cheek was deposed to by four persons, one saying that it had been caused by a burn; one witness had never seen such a scar on Townsend's face and another was not sure. Thirty-two witnesses were called for the Crown in all.

For the defense forty-nine witnesses were called, most of whom knew Townsend well and all of whom swore the prisoner was not he—Townsend's mother, step-father, brother-in-law and two sisters were amongst those called. All gave general evidence, but many gave reasons for their belief as well. No one seems to have known of the scar on the right foot, but two admitted the scar over Townsend's left eye. There was a consensus of opinion that Townsend's eyes were

brought up from Kingston penitentiary as a witness on the two "Townsend" trials.

He identified the prisoner without hesitation or equivocation. He said on his examination that he hoped that he might be pardoned "because I know I did not commit the murder," but "I expect no reward for giving testimony"; he was pardoned June 22, 1868, after serving more than thirteen years. I do not know anything of his subsequent history.

blackier than those of the prisoner, being described as "black," "dark," "hazel," dark gray," "not quite jet black," etc., very different from the prisoner's blue eyes. The witnesses agreed that Townsend's hair was dark, almost black, and straight as an Indian's, while, as one pointed out, the prisoner's hair curled. Townsend's eyebrows were heavy and black, and they nearly met; his face was "short and fat," "square" not long; his forehead was low; his mother, sisters and stepfather testified to the big joints of his feet, different from those of the small and rather dainty feet of the prisoner. Several who had seen him daily for years told of his speaking through his nose or clenched teeth, of his downcast look, his feminine voice and beardless appearance. Several admitted than seen at a particular angle the prisoner looked a "*leetle* like Townsend"; but all were confident that they were not the same. Mrs. Dewar and her two daughters swore to Townsend having the letters W. T. and an anchor on his arm, put on with India ink or powder; and it appeared that the anchor on the wrist was part of the description sent along the line of railway when Townsend was making his escape. Another witness Quick deposed that if the prisoner was Townsend he would have a scar on the left arm an inch and a half long; the prisoner at the request of his counsel bared his arm, and no scar, anchor or letter was to be seen.

Mr. Freeman said he did not think it necessary to address the jury; the Solicitor General took the same course and the trial Judge gave a short and impartial charge, telling the jury that there was really but the one question to decide, "Is the prisoner William Townsend?"

After six and a half hours of consultation the jury announced their inability to agree; one jurymen desired the Judge's opinion, which was of course refused; and the jury were discharged. It was ascertained that the division in the jury was: For conviction 7, for acquittal 4, undecided 1.

The delay in finding a verdict seemed to dismay the prisoner who lost little by little his jaunty and confident air; the failure to agree hit him hard, he thought "it was the d—dest piece of business he ever came accross." The trial judge remanded him to prison till the next Assizes, six months later, informing him, however, that if he could produce satisfactory evidence that he was not Townsend or could show who he really was, he would be admitted to bail—the prisoner declined and spent next day writing letters.

During the interval many efforts were made to induce the prisoner to give some account of himself, and offers were made to him to

collect a fund for his defense; he steadfastly refused, saying that he did not require money, all he had to do was to prove an alibi; to one he spoke of being in communication with his friends, to another "You do not know my family history, there are things which rather than expose I would die on the gallows"—the offers of others he treated with contempt, silent or avowed. He did, however, unburden himself in part to a Scotsman from near Glasgow, Walter Maitland; to him he said he came from Springburn, two miles from Glasgow, and he gave an accurate description of the place, the names of the farmers, etc.—a description which could hardly have been made up, except from personal knowledge of the locality. At the second trial it was attempted by the Crown to explain this knowledge by the fact that Townsend's brother-in-law, John Horn, was a Scotsman; but he came from Dunfermline, not at all near to Glasgow, especially in those days; and the other Scot, the step-father, David Dewar, came from Cupar in Fifeshire and knew nothing of Springburn.

Considerable interest, however, was taken in the case, and a small fund was collected for the payment of witnesses.

A letter written by him at the urgent advice of a Justice of the Peace near Cayuga, in June, 1857, shortly after his incarceration at Cayuga, began to bear fruit; and the effect was manifest at the next trial. This was written to "Mr. J. Anderson, Recording Scribe, Sons of Temperance, California"; and stated that the writer "R. McHenry"¹³ had been charged with a crime committed in Canada when he was residing at "Chips' Flats," California—this was published in newspapers far and wide and produced a crop of witnesses for the prisoner.

It was determined to proceed at once against the accused for the murder of Charles Richards at Port Robinson; and as the locus of this crime was in the County of Welland, he was removed from Cayuga Gaol (in the County of Norfolk) to Merrittsville,¹⁴ in the

¹³At the second trial this letter was produced, it detailed the history of McHenry in Cleveland and California, and mentioned a number of books in which McHenry's name was recorded in California. Much was made by the Crown of the difference in name. The prisoner signed "R. McHenry" to the letter, whereas the signature "Robert J. McHenry" appeared on the Sons of Temperance books in California. Mr. McDonald, the Crown counsel, said during the progress of the defense, "he had intended to prove that there had been an R. McHenry in California, and that this man had taken his name and written in his name for the papers, which he never would have got had he written R. J. McHenry." But no attempt at proof of that character was made, although there was much cross-examination as to other persons in California called McHenry.

¹⁴This, the county town of the County of Welland is now called Welland.

County of Welland. At the Assizes (called on the Criminal side, the Court of Oyer and Terminer and General Goal Delivery)¹⁵ on October 7, 1857, a true bill was found against the prisoner under the name of Robert John McHenry for the murder of Charles Richards; on being arraigned before Chief Justice Draper he pleaded Not Guilty; and on motion of his counsel, Mr. Start, the trial was postponed until the Spring Assizes.

At the Spring Assizes before Mr. Justice McLean, at Merrittsville on March 25, 1858, the bill found at the previous Assizes was quashed on motion of the Crown Counsel; and on the same day a true bill for the murder of Charles Richards was found against "William Townsend, otherwise called Robert John McHenry"; to this indictment the prisoner pleaded Not Guilty and the trial proceeded next day, Friday, at 9 a. m. It lasted Friday 9 a. m. to 10 p. m., Saturday 9 a. m. to 10 p. m., Monday 9 a. m. to 10 p. m., Tuesday 9 a. m. to 4:45 p. m., when the Crown rested, having called 62 witnesses; the defense Tuesday 4:45 p. m. to 9 p. m., Wednesday 9 a. m. to 9:30 p. m., Thursday 9 a. m. to 8 p. m., Friday (Good Friday) 9:30 a. m. to 9 p. m., Saturday 8 a. m. to about noon, when the defense rested, having called 89 witnesses; rebuttal began and continued until 7 p. m., Monday 8 a. m. to 10:15 a. m., having produced 18 more witnesses. The leading counsel for the prisoner, Mr. S. B. Freeman¹⁶ (Mr. James G. Currie was with him), addressed the jury 10:15 a. m. to 2:15 p. m., being followed by leading Counsel for the Crown, Mr. Rolland Macdonald (Mr. Robert Harrison was with him), till 4:55 p. m.; the Judge's charge took till 8 p. m., when the Court rose to resume Tuesday, April 6, at 9 a. m. At 4 p. m. the Jury returned with their verdict, Not Guilty, adding "the prisoner is McHenry."

¹⁵At that time the trial courts were separate courts from the Court of Queen's Bench and Common Pleas, but were presided over by judges of these courts. On the criminal side the trial courts were Courts of Oyer and Terminer and General Gaol Delivery; on the civil side, Courts of Assize and Nisi Prius. The same judge presided in both and the courts were commonly called "the Assizes"; the judge "the Assize Judge." All these technical distinctions are fully explained by Blackstone in his commentaries: they came to an end in Ontario in 1881 by the operation of the Judicature Act, 44 Vic., c. 5 (Ont.).

¹⁶Mr. Freeman, who was not only a man of high legal attainments but also of the highest character, told the jury how he came to defend the prisoner on the former trial and said: "He asked the prisoner nothing about his history or circumstances, but contented himself with hearing the evidence. On that occasion he knew no more of the prisoner than what he had learned from the witnesses on the previous occasion, except that he had received certain documents from California which had not been allowed to be put in as evidence." He was referring to a letter from California to the Governor General of Canada from residents of Chips' Flats in California concerning McHenry, which, on objection by counsel for the Crown, was not allowed to be put in—an unexceptionable ruling.

Both parties were better prepared for this trial, having at the previous trial learned the weak points of attack and defense.

Very many of the witnesses on both sides swore generally without adducing reasons for their belief that the prisoner was or was not Townsend; some, however, condescended to particulars and gave reasons.

The first thing to be noticed is that several witnesses for the Crown swore that Townsend had "blue eyes," "large blue eyes," one even saying "light blue eyes." This was opposed by an overwhelming mass of evidence that his eyes were black (one schoolmate said that he was known at school as "Blackeyes"), "dark," "very dark," "dark hazel," "dark brown," etc. So much was the Crown impressed with this evidence that two medical men were called who testified that "persons' eyes might grow lighter or darker so that it is possible for a man to have a dark blue eye one year and a light blue eye four or five years afterwards"; one doctor spoke of a certain child with light blue eyes, when she was grown up having them dark hazel (this is of course a well known phenomenon, but no one swore that a dark or black eye ever grew to be a blue).

The hair of Townsend was said by many to have been darker than that of the prisoner, but several said it was sandy and lighter—one endeavoured to account for the color apparent by saying it might have been dyed—most of the defense witnesses swore to Townsend's hair being black and straight as an Indian's, and it seems to have been taken for granted and almost admitted that the prisoner's was considerably lighter than Townsend's.

Counsel for the Crown in his address to the jury "threw aside all the testimony as to the color of this man's hair and eyes. One often knew nothing about the color of hair and eyes of one's friends . . . even now it was difficult to say whether the prisoner's hair was black or brown." Mr. Freeman on the contrary triumphantly exclaimed to the jury, "Would this man, the prisoner, ever be called 'Black-eyes?'" No doubt he was wise in dwelling upon this apparent trifle; a little thing like that notoriously has an immense influence with a jury.

The scars came in for considerable attention—that over the left eye seems to have much resembled one borne by Townsend, as did that on the right foot. But the large scar on the left cheek was the subject of much contradiction; at least nine witnesses swore that Townsend had such a scar, while as many swore positively he had

not—these included Townsend's step-father and some of his most intimate friends—and nearly a score had never noticed such a scar as they thought they must have done had it existed. One witness for the Crown swore that the scar was caused by Townsend being kicked by a horse, but he was speedily discredited; the man who was in fact so kicked being called as a witness.

The dramatic episode of the scar on the left arm, which occurred in the first trial was not repeated; the witness David Quick was not called on the second trial at all.¹⁷

The marking in Indian ink or powder on Townsend's left arm—a mermaid (or anchor)—was again sworn to by several, amongst them certain witnesses called for the Crown; but its absence on the prisoner was discounted by the evidence of two who swore that they had themselves had similar Indian ink marks removed "by putting breast milk on the arm over the mark and then pricking the arm in the same place again"—other similar cases were deposed to; and no point was made of the mark by either Counsel or by the Judge. The defense relied strongly upon the ungainly feet of Townsend; "lumpy," "with the big toe over-riding," "in fact big lumps which showed through a boot." One witness swore, "if that's Bill Townsend he has got new feet on him," another told of getting a pair of boots for him and wearing the new boots for two hours without discomfort, while Townsend could scarcely get them on at all and could not wear them. The prisoner and witness exchanged boots; "that of the prisoner fitted very tight on the witness and that of the witness easily slipped off and on prisoner's foot"; still another spoke of Townsend's foot having "larger lumps than those of mine" (about the size of half an egg)—at the request of a juror the feet were compared and, on this comparison, great difference in size was at once apparent.¹⁸ The fact that Townsend could never write decently and would not read anything but the lightest stuff, while the prisoner spent much of his time in reading or writing was also adduced; as was the want of beard in Townsend and the heavy beard of the prisoner.

¹⁷No reason appears for the omission to call this witness. The omission of all mention of him or his evidence raises considerable suspicion as to the reliability of his evidence on the former trial.

¹⁸Dr. Burns had "known lumps on a man's toe joints caused by disease such as gout or by the friction of boots, by the thickening of outside skin; some may be removed." Dr. Brooks said, "the continued use of tight boots might enlarge the toe joints and in some cases, the cause being removed, the enlargement would disappear." But such theories had probably little effect against the ocular demonstration given in court.

It is doubtful whether all these would have secured an acquittal, the defense was not much stronger than at the first trial—it was the *alibi* evidence which turned the scale.

Mr. O. C. McLouth, an attorney of Sandusky, Ohio, testified that the prisoner had been confined under the name of Robert J. McHenry in the Sandusky gaol from July, 1851, to March, 1852, on a charge of assault, which ultimately was not proceeded with—he then represented himself as an American (if this evidence was true, the prisoner could not be Townsend, as he was employed as a cooper by Benjamin Diffin in Canada February, 1852).

Captain Turnbull, a lake captain, swore that the prisoner had worked on his vessel, the "Powhattan," as cook or steward at least from early in October to the middle of December, 1852; under the name of McHenry, that he understood him to have come from Scotland and that he then had the scar on the left cheek—that he left Captain Turnbull to go to California.

Captain Lewis, who had been first mate on the "Powhattan," said that the prisoner under the name of "Robert J. McHenry" had been steward on that vessel from August or September until December 18, 1852, that he said he was a Scotsman. Turnbull testified that in the latter part of 1853 or the beginning of 1854 (Lewis said it was about February, 1854) he received a letter written by McHenry, dated in California, September or October, 1853, in which he gave particulars of the work he was at in California. Lewis corroborated this, but unfortunately the letter had been destroyed.

Then came four witnesses who deposed to having known the prisoner at Chips' Flats,¹⁹ in Sierra County, California, one certainly as early as July, another as early as August and the two others in October, 1854. They all gave circumstantial accounts of their intercourse with him—one (Frank J. Huber) had recommended him to join the Sons of Temperance and frequently saw his signature "Robert J. McHenry," another (John Follinsbee) telling of a lawsuit in which they were both interested. That the prisoner had written from

¹⁹"Chips' Flats" was named after its discoverer, a ship's carpenter, who was, of course, called by the regular nick-name "Chips"—his real name is not given. Much of the evidence of transactions at "Chips' Flats" reminds one of Bret Harte's stories. The witnesses speak of French Corral, Red Dog (Nevada), Yuba County, Balsam Flats, Foster's Bar, Chips' Diggings; "Scotty" was a well known character; Hugh Aikins was generally known by the name of Walton. "There were very few who then knew me by my proper name." "Bill Henry of Forest City kept an eating house and sold beef"; "spoke quick with a kind of Yankee tone," and "was considered a very nice young man." A Jack Follinsbee had taken part in a law suit with McHenry, but "knew him by the name of Bob and no other name."

Cayuga Gaol to James Anderson, recording scribe Sons of Temperance, California, was certain; and unless all these four men were perjured or mistaken, it was impossible that he could be Townsend.

In the light of the dates the evidence that Townsend had been seen in Chicago, and had then said he was on his way to Australia or California, giving himself at the same time a new name with "Mc" in it—one witness thought it was "McHenry"—ceased to be of importance, particularly when the witness (George May), who saw him there, did not "recognize the prisoner as the man—he must have changed very much."

The perfect coolness of the prisoner was apparent throughout the trial; he would hold a candle up to his face that the witnesses could see him better, pointing out the scar on his cheek, urging them to "Take a good look;" "Take off your goggles, old fellow;" "Be sure, sir, take a good look at me; remember the consequence;" telling them "I come of a long-headed race," asserting to the Crown Counsel "I am open to answer any question you like to ask about Scotland;" and when a witness expressed a fear that he would do him harm and had him searched addressing him condescendingly "Poor fellow, come along."²⁰

There were some curious circumstances that were not explained—the prisoner seemed to know Iles, he spoke of having been along the Welland Canal and of knowing the Grand River and London (Upper Canada), he spoke of his stealing a boat off the "Mohawk" and selling it at Dunnville, correcting a person who said it was sold at Cayuga; he said he had seen Blowes and knew something about King and was horrified when he was told they had been hanged; he knew Mr. Jennings of Pelham and told Mr. Hellems (when he said that he and Townsend's father were once working building the piers at Port Dalhousie) "You were driving piles." If he and Townsend were not the same person, it is possible that they met at some time; but that is not a complete explanation.

Upon the acquittal of the prisoner, the Crown entered a *nolle prosequi* on the Cayuga indictment and the prisoner was released.

It is alleged by certain members of the Townsend family that William Townsend shortly after his escape enlisted on a U. S. vessel on Lake Erie and wrote his mother to that effect from Erie, Pa.; that he was informed by his mother of the arrest of the *soi-disant* McHenry and he wrote her to let him know and if they convicted

²⁰This was believed to be the longest murder trial ever had in this province. The only ones that at all approach it were the celebrated Sifton trials at London.

him he would come and deliver himself up. Nothing of the kind came out in evidence at the trial.

It is also said that Townsend remained on the U. S. boat until the outbreak of the Civil War, when he again wrote his mother that he had been taken off the war boat and was going into the war.

I have not been able to obtain any account of the subsequent career of McHenry.

THE EXPERIENCES OF A PSYCHIATRIC MISSIONARY IN THE CRIMINAL COURTS

JOHN R. OLIVER¹

Judges, lawyers and policemen—men who have lived long under the conservative influences of the law—all come from Missouri. They “have to be shown.” And they have to be shown, not once nor twice, but unto seventy times seven. Of course, once they have been subjected to this laborious process, their hearts are yours unreservedly, and they will stand by you and your “modern methods” to the bitter end.

The writer of this article has spent more than two years in attempting to introduce into the criminal courts of a large city modern medico-legal methods of examination and classification. The principle, for which he has striven, may be simply stated. “In the administration of the criminal law, the judge on the bench and the psychiatrist in his psychopathic laboratory should work together.”

The first and the last step in establishing this principle is to convince the judge, by showing tangible results, that the principle is true.

The writer has been fortunate, beyond the lot of many fellow psychiatrists, in the type of legal mind, with which he has had to deal. At all times he found the judges of the various courts more than willing to listen to him, and always interested in what he was trying to attain. The same may be said of the city authorities, with which the writer's work brought him in contact. If, at any time, there was any friction between these two “resorts” of municipal government because of him and of his doings, he himself, at least, was never made to feel it. Few missionaries, psychiatric or otherwise, have their lines cast in such pleasant places and among such courteous gentlemen—courteous and forbearing, even when they were being forced, as one judge put it, “to envisage a whole chain of new ideas”; when, as the writer has dared to express it, they were claiming their Missourian birthright, and were “being shown.”

The writer's experiences during these past years of effort, that have at last been crowned with some measure of success, may be of interest and of value to psychiatrists, who are working towards similar

¹Medical officer and alienist to the Supreme Bench of Baltimore City.

ends. And it is in this hope that they are here set down; the dark sides of disappointment, as well as the lighter, more humorous elements in the situation. The writer feels, at the outset, that he ought to apologize for the egocentric undertone of this statement of his missionary efforts. It appears, however, unavoidable.

The ideal of a "psychiatric missionary" is a favorite one of Professor Adolph Meyer's. The writer spent two years with him, on the house-staff of the Phipps Psychiatric Clinic. Two years with Professor Meyer should supply the ordinary psychiatrist with enough enthusiasm and ideas to last him the rest of his professional life. Among many other valuable things, the writer was impressed by Professor Meyer's plan for what he called "psychiatric missionary settlements." The great Phipps Clinic, of which Dr. Meyer is the head, must be, in the nature of things, a static institution. Cases are brought to it for diagnosis or treatment. It is not dynamic, for it cannot reach out into the individual lives of the surrounding neighborhoods and seek out cases that need help. But such a dynamic force, in psychiatric matters, could be supplied by a "psychiatric missionary settlement." It would be modeled on lines already laid down by those religious bodies that have done so-called settlement work.

For instance: a trained psychiatrist would settle down in some densely populated district, as a mental missionary. He would seek to get into touch with the families of the neighborhood, with the schools, especially with the police courts. On the one hand, he would preach and teach and live simple lessons of mental hygiene for the normal people of his district; but he would also be a specialist for "re-adapting the misfits," for straightening out the backward children in the schools, for studying the local "corner gangs," and the habitual offenders in the police courts. He would be consulted by his people in a thousand difficulties, outside the province of a practicing physician. He would re-adapt to suitable activities the men, women and children who had been forced into unsuitable environments; he would discover for the mentally deficient those conditions under which they could work and thrive with some measure of success. He would be an outpost, set on guard against the three enemies: epilepsy, alcoholism, and syphilis.

This is a wonderful ideal. The work of such a man in the criminal courts is only a small subdivision of it. But it is this subdivision which most directly appealed to the writer, and which is the form of "missionary activity" that has occupied him for the last two years.

There were two, perhaps three ways of reaching the goal that he set before him. The way that seemed, at the time, most remote of attainment may be mentioned first. It was suggested to the writer by Col. Pearce Bailey, in command of the Psychiatric Division of the U. S. Medical Reserve Corps. Dr. Bailey said that the greatest success in using psychiatric methods for the re-education and re-adaptation of misfits and delinquents was being achieved in the Army; that, after the war, the results obtained would be so compellingly impressive that the civil authorities would be forced to accept the psychiatrist as a necessary element in the solution of all social and legal problems. But all this was to be "after the war." As matters stood then, there were only two ways open—the way of the beneficent millionaire, and the way of the psychiatric missionary.

The millionaire can do what has been successfully done already in at least one large city. He, or a few like him, can contribute enough money to pay psychiatrists, whom the authorities permit to sit behind the justice, at the station-houses, as a sort of unwelcome addendum to the court. Or as what the Germans would call "Beisitzende"—with the accent on the "Bei." Moreover, the millionaire can, with his money, establish psychopathic laboratories in connection with the criminal courts, and persuade the officials to use them, with more or less suspicion, as a new untried experiment. But it is a vastly different proposition, when the state or the city is asked to appropriate funds for a psychopathic laboratory out of the taxpayers' pockets. Then, judges and governors and mayors and common councils all suddenly discover that they come from Missouri, and "want to be shown."

The writer had no millionaire friends, but Professor Meyer had given him the ideal of the psychiatric missionary. And, about two years ago, he began to follow it out.

He was, at the time, on the house staff of a large psychiatric clinic; this meant that he had few free hours at his disposal. But he began in a small way, by the study of a single police court of the district in which his hospital lay. By chance, he had been summoned there several times to make out commitment papers for mentally unbalanced prisoners; and this gave him an excuse for visiting the court. He made it a rule to spend there his two free hours of each afternoon. He found the police most hospitable, for they suspected him of no ulterior motive. What was still better, he found a friend, a most loyal one, in the police justice himself. The late Justice Clift was then a dying man. He knew it, but, like a good soldier, he was

dying at his post. And instead of rushing at any cost through the day's routine, he was filled with a determination to make the last months of his official duties as thorough an act of social service as possible. He had a broad outlook on criminal problems; and he listened eagerly to whatever the writer could tell him about those new contributions to common justice which the psychiatrist and his experience had to give.

The writer remembers vividly the first police court case in the disposal of which he was consulted. A man, the father of a large family, was an inefficient worker and an habitual brawler, a prey to sudden outbursts of temper, in which he attacked his wife and beat his children, to the perpetual scandal of the neighborhood. He had been fined and jailed and fined again. All to no purpose. The writer asked permission to examine the man. It turned out that he had definite kidney trouble, with a blood pressure of over 200. Any sudden increase in pressure brought on fits of dizziness and rage and general outbreak. Other tests showed him to be mentally retarded—an infantile undeveloped type of mind, although not definitely deficient. He was sent to a hospital, his renal condition was treated, his blood pressure somewhat lowered; and when he returned to a new type of work, fitted to his mental level and in which he gained a measure of success—there was peace in that neighborhood, a lasting peace.

This was the beginning. And, of course, it has been typical of most of the writer's work. For the cases, which have passed through his hands, have seldom been purely psychopathic ones. It is his boast—surely a modest one—that, although a psychiatrist, he has not forgotten that he is also a physician.

For three months the writer gave all his free time to this one station-house. He came to know every inch of it and everyone connected with it. It taught him a great many valuable lessons. His work there grew. More and more of the petty habitual offenders were studied, and their difficulties solved. To every problem, presented before that little court, he stood ready to contribute whatever help his training and experience could give. The police, always friendly, became interested. Now they were glad to listen; they even asked questions. Then, thanks to another friend, a clergyman of the city, the writer was asked to speak to the Men's Club of the parish on "The Psychiatrist in the Police Court." At this gathering, there were a number of lawyers, a judge, and a group of the writer's friends

among the police, who brought with them the police from other station-houses.

From this, it was but a step to these other seven station-houses of the city. They had heard of the writer's activity at the police court of his district; he seemed a harmless, an interesting—even a useful person, with no axe to grind—only anxious to be of service when he could.

At this point, one of the judges of the Supreme bench, an old friend of the writers, became interested. He wrote letters to each of the police justices, telling them about the writer's work, and asking them to call upon him, whenever he was needed.

But after all, eight station-houses, in widely distant parts of a large city, are a great many, especially, when a man is already on duty in a psychiatric clinic, with very little free time. However, the writer did what he could. He kept careful records of all cases examined by him. He had to do his own typewriting, and often sat up late to do it, after his last round on the wards. But it was well worth while. So six months passed.

The next step of the missionary's progress was important. The judge, already mentioned, introduced the writer to one of his fellow judges, Judge James P. Gorter. Whenever mention is made of psychiatric or social work in the courts of Baltimore, Judge Gorter's name must be mentioned in connection with it. When the writer first knew him, he was presiding over the first division of the Criminal Court.

From the first, he made use of all the time and all the help that the writer had to give. It was his custom to beckon the writer to sit beside him on the bench, so that he might the more easily understand the problems with which he had to deal. In the many disappointments that were to come to him before the goal of some success was reached, the judge's kindness and encouragement never failed.

Thanks to Judge Gorter, the writer's work became more and more centered in the higher criminal courts. The police courts had to be somewhat neglected. But that could not be helped.

Meanwhile, the writer was giving his time without any compensation whatever. He was soon asked by the office of the state's attorney to examine and to report on difficult cases; also without compensation. Gradually, it became the custom of the court to summon him as an expert, who could be trusted as impartial by both sides. The Prisoners' Aid Society and other similar organizations made use of his services also. The work—and he kept careful records of

every case examined—grew constantly. Within a period of eighteen months, he had examined and reported on one hundred and fifty odd cases for the criminal courts, and some twenty-five for the state's attorneys offices.

During this period the writer left the house staff of the Phipps' Clinic, becoming a member of the visiting staff, and having his own private practice outside the hospital. This meant more free time. He gave this time to the courts.

In January, 1918, it seemed as if the time were ripe to put the work on a permanent foundation, by establishing a properly equipped psychopathic laboratory. For, under existing circumstances, the writer had no office of his own at the court house, no stenographer, no appropriation of any kind. It was hoped that the state legislature would recognize the value of his work and be willing to put it on a more satisfactory basis. In order to place the matter before the legislature, much material was collected; advice was asked and given by psychiatric authorities in Chicago, Boston and other cities, where psychopathic laboratories had already been established. After much deliberation, it was decided to introduce a bill into the legislature, simply calling for an appropriation of five thousand dollars a year, to be expended by the Supreme bench for the establishment of a medical service in connection with the city courts of Baltimore. This bill was copied almost verbatim from a bill passed in Massachusetts for a similar purpose. The writer felt that the end of his purely missionary period was in sight. In reality, it was still a very long way off.

The bill, after passing successfully through the House, was referred to a Senate committee, and never appeared again. That was the end of it.

From this point on, the writer found himself involved somewhat in local politics, a science for which he had neither aptitude nor understanding. Perhaps, therefore, it may be as well to drop here what in our Latin lessons at school we were taught to call the "*oratio obliqua*," and to adopt the more direct use of the first personal pronoun. In other words, I found myself halted in my work by local conditions, a description of which may prove interesting to other missionary psychiatrists.

In Baltimore, the municipal government pays the judges and the court officials of the city's Supreme bench. These expenditures are provided for in a yearly budget, fixed by the municipal board of estimate and control, at the beginning of each year. It is, however,

in the power of the state legislature to pass an act, entailing the payment by the city of the salaries of such officials as the act may create. But, naturally enough, the city government objects to this as an unjust infringement of its rights of local self-government. And it was because of this antagonism that our bill, appropriating five thousand dollars for our psychopathic laboratory, which had the approval of the bench and the state's attorneys office, was sidetracked by the influence of the city authorities, and never reached the governor.

To me, the failure of this bill was a great disappointment. I had worked gladly without compensation for two years. I wanted the money less for myself than for the much needed laboratory. For, remember, I had been working with only such outfit and test material as my personal purse could furnish: I had no office in the courthouse, and no official standing in the courts, except so far as a standing was given me by the personal friendship of the two judges then presiding over the two criminal courts. But the judges took the various courts in yearly rotation. What would happen, therefore, to me and to my work, if another judge should suddenly arise on the criminal bench "who knew not Joseph."

I took my courage in my hands and went to city headquarters. From my father, an old soldier, I have at least learned the valuable lesson of always going for what I want "to the Big Boss," instead of wasting my time on subordinates. In other words, I went to see His Honor, the Mayor.

My experience with the mayor was most helpful. He also "was from Missouri." Like the judges, he also "wanted to be shown." But he wanted to be shown an entirely different thing. The theoretical, idealistic side of the question did not appeal to him. He knew little of the problems of the administration of the criminal law; the feeble-minded and the mentally defective habitual offender did not interest him at all. But he *was* interested to know what definite value, expressed in dollars and cents, the proposed psychopathic laboratory would have for the taxpayers of the city, whose representative he was. This was a new viewpoint for me. And it did me good to have to put my work on such a basis. I have never ceased to be grateful to the mayor for the kindly way in which he forced me to state my work in the terms of "practical politics."

I reviewed and re-tabulated all my case material. I showed the mayor the great waste in money that arose from the court costs and jail upkeep of one single habitual offender, who was feeble-minded, and who, if diagnosed at the beginning of his delinquent career, might

have been kept from becoming a burden to the city. I also showed him how large a saving in "expert fees" could be made by having a medical officer and alienist, like myself, permanently attached to the court, who could be used by the judges and accepted by both parties in civil suits or criminal actions. There was a great saving, too, in having prisoners of questionable mental responsibility examined at once by a court alienist, instead of taking the long and expensive way of paying for their upkeep in jail while they were being referred to the lunacy commission, which was overworked anyhow and partially disorganized by the war. Moreover, the judges often paroled in my care prisoners, whom I had examined and for whose future good behavior I felt that I could vouch. Such paroles, instead of costly jail sentences, were all savings to the city. In a word, I went over all my work of the past two years and embodied it in a statement, in which I estimated, not my usefulness either to the judge on the bench or to the delinquent in the dock, but to the city treasury and to the city taxpayer.

How much all this impressed the mayor I do not know. But he suggested that I wait until the end of 1918, when the budget for 1919 would be in process of completion, and when the board of estimates, which drew up the budget and of which the mayor was chairman, would be holding public hearings. Then I could appear before the board, make known to them what appropriation I needed for my laboratory, and, if the Board accepted my suggestions, an appropriation for the laboratory would or might be made in the budget for 1919.

But I could not wait so long. The work at the courts was growing every day. My afternoons I devoted to my private patients. But every morning it had become my custom to go to the courthouse at ten o'clock and to remain there at work until one. Yet even these three morning hours were often insufficient for the work. Time and time again it happened that I had no sooner returned to my private office than I would be summoned to court again on some urgent case. In this way, the courts began to consume more and more of my time, not to mention the hours spent on the writing up of records and reports. There were fewer and fewer hours for my private practice. Besides all which, I still had my out-patient work at the Phipps Psychiatric Clinic, where I was one of the dispensary psychiatrists. Towards the middle of 1918, in April, I had to make a definite choice. I had no private means of my own; and my bank account was getting very low. So, in order to keep up my private practice, I began to stay away from the courts in the morning.

The result was that I was sent for to come to the courthouse; sent for, neither once nor twice. And it became clear to me that I was really needed there. I had built up a court practice; there was no other man to do the work; and I felt myself responsible. I had begun it. At any sacrifice to myself, I must somehow carry it on.

At this juncture, at a meeting of the Supreme bench, the following proposal was made. The bench felt that it had come to depend on me in medical and psychiatric matters, and it wished to attach me to the court in some permanent way. The only means of doing this, under present conditions, was to appoint me a bailiff, with a bailiff's salary. The Supreme bench had no other office in its gift. But this would give me two things: a small salary, fifteen hundred dollars a year, and a definite position in court. I was asked whether or not I would accept this offer.

Of course, this was not exactly what I had hoped for. It gave me no appropriation for any laboratory service, no office, no stenographer. But, as I have said, it did give me a position in court, and it did make it possible for me to carry on the court work without having to worry over the loss of private practice.

So, in June, 1918, the Supreme bench appointed me a bailiff. Judge Gorter was kind enough to give the news of my appointment himself to the newspapers, and to make it clear, first, that I was the medical officer and consulting alienist of the court, and secondly that the Supreme bench had appointed me a bailiff, because that was, at the time, the only available salaried office in its gift. In the future, the bench hoped to put the medical service on a more satisfactory foundation; but for the present, this appointment as bailiff would attach me permanently to the court, and would also give me some remuneration for my services.

I accepted the appointment. I was duly sworn in; and the newspapers gave several kind notices to me and to my work. But I did not have time to read them. The day after I was sworn in, I started off on my summer holiday in Canada.

And now comes the final stage of my missionary history, which is not without its humorous side, even to those who were, like myself, immediately concerned in it.

I left for my holiday in a pleased frame of mind. I felt that the labors of my missionary journeyings were almost over. My work had been acknowledged by the Supreme bench as valuable and even necessary. I was an official of the court; and what was more, I had the assurance of some permanent compensation. I was well satisfied. When I returned in September, I planned to take the next step for-

ward. I would, as the mayor had suggested, appear before the board of estimates and ask an appropriation for my laboratory in the budget of 1919.

So, the courts being closed for the summer, I put all thoughts of delinquents and of their ways out of my head, and spent two months playing golf, fishing and camping in the Laurentian hills of the Province of Quebec. With strength like a giant refreshed, I came back to my work in September, when the courts held their first session of the autumn term.

The very first news that I had was surprising—even distressing, for I had spent all my balance at the bank on my holiday, expecting that my bailiff's salary would be waiting for me at the courthouse. It was not waiting. I was not even on the pay roll with the other bailiffs. For the second time, I found myself mixed up in local politics.

During my absence, the following events had happened. When in due time, the clerk of the Supreme bench intimated to the city comptroller that I had been appointed a bailiff and was to be paid as such, the comptroller, after consulting the board of estimates, made courteous answer that "he was unable to pay Dr. O's salary, as no appropriation had been made for it in the budget for the current year." This annoyed the Supreme bench very much. It annoyed me even more. It seemed absolutely heart-breaking, this disappointment at the last moment, when I had thought my battle practically won. But a missionary must have a certain amount of bullheadedness; he must refuse to accept defeat. So again I took my courage in both hands and went once more to see the mayor. Again he received me most kindly; and, in a few words, made me see the logic of his position.

In the 1918 budget, the Supreme bench had an appropriation for twenty-four bailiffs, and for no more. But all these positions had been already filled. In appointing me "Bailiff Number 25," the bench was appointing me to an office that had no appropriation attached to it. The matter might be adjusted in the budget for 1919; but, for the present, there was nothing to be done.

So I had a court position; work, that had accumulated during the summer, more than I could handle; and—no money.

Thus the matter stood. The judges insisted that they had the right to make any appointment that they pleased in connection with the courts, and that the city was bound to pay the appointé's salary. The mayor and the board of estimates dissented. They pointed to the budget.

Finally, in despair, I drew up another statement. I set down the number of cases that I had examined, without compensation, for the courts and the state's attorney's office, during the past two years. I explained my dilemma, and my difficulty, forced on the one hand to make a living by private practice, and on the other, drawn by a far stronger desire to carry on the work that I had begun in the courts. I sent this statement to the mayor and asked him to lay it before the board of estimates.

On October 8th, the board, at the mayor's suggestion, voted to pay me my salary out of the contingent fund. And I am now, at last, after two and a half years of missionary effort, on the pay roll and an officer of the court. I have, as yet, no laboratory, no office at the courthouse, no stenographer. But I have, I think, won the first and most difficult part of the battle. I have still hopes of securing from the board of estimates an appropriation for my laboratory in the budget for 1919. But even if I fail in securing this, even if it must wait for still another year, I have at least established the principle for which we have been fighting; that the psychiatrist and the physician should be integral parts of every criminal court; that the judge on the bench and the psychopathologist in his laboratory (when he gets one) must work together towards a solution of the problems of delinquency.

All the results, achieved in the past two years, cannot be gone into here. Some 200 cases have been exhaustively examined and dealt with for the court; some 25 for the state's attorney's office; and at least 100 more for the Prisoners' Aid Association, the Children's Aid Society (of which I am the medical director also) and other charitable institutions. But there are two sets or classes of results, which seem to me more valuable than the others. First, the actual cases of delinquent difficulties solved, feeble-mindedness discovered, deficiencies readjusted, environments modified; an immaterial mass of human happiness, not appreciable in figures of any kind—yet very real for all that. And secondly, the case histories, that are gradually growing into a most interesting collection of useful medico-legal material. Criminology, as I see it today, lacks its volumes of case reports. What would the law be without its cases; its collections of actual legal happenings? In criminology, however, we have learned theoretical treatises enough, but where shall we find the raw material of criminal activities—murders, thefts, false pretenses, frauds—in which we may study the types of the criminal mind, and from which we may build up our theories and general laws of criminal action? The old Newgate calendar is no more. And merely the report of a criminal trial is not what one wants anyway. There are a few Ger-

man collections of cases (Feuerbach's "Aktenmaessige Dastellungen merkwuerdiger Verbrechen." Gruhle's "Verbrechertypen," etc.) but they are not easily accessible. And I know nothing of a "case book" in English; a book of carefully selected cases that shall help the student of criminology to the underlying principles of delinquent thought, just as a collection of "cases in torts" helps the student in the law school. It is my hope to be able gradually to supply a series of typical cases, taken from criminological literature or from my own observation, which may be of help, not only to the psychiatrist and the social worker, but also to the man in the street, when he is drawn for jury duty in a criminal court.

Another lesson, that I learned from Dr. Meyer at the Phipps Clinic, is the lesson of "The History Room." In that large complex building, with all its wards, laboratories, offices and workshops, there is a quiet little room, off the library, which was always to me the "Sanctum Sanctorum" of the whole institution. This was the history room. Here were filed the thousands of histories of all patients ever treated at the clinic since its foundation; and each history, a small volume in itself, with all the details of the patient's family, personal history, physical and mental status, type of mental reaction and hospital progress, was a mine of wealth, gathered with infinite patience—a mine that future psychiatrists might use (as the legal commentator uses his case law) for the working out of the great basic principles of psychiatry.

This remote quiet little history room has been an ideal that I have kept always before me in working up my own criminological records. I hope, some day, to have my own history room. And from the mass of material gathered there, I should be able to make some contribution to filling a gap in criminological literature, with a series of carefully grouped cases, with volumes of medico-legal case reports.

So far, I have made careful studies of only a few delinquent groups. One group of several murders, all of which seemed to show similar psychopathological elements; and another of eight drug addicts, who were under my observation for six months and from whose meticulously kept records some interesting inferences may be drawn.

In conclusion, I must admit that there is one crushing objection to be brought against my court work and what little good I have accomplished there. Thus far, the work does not stand by itself. It is dependent for its existence on the personality of one man. And that is a great weakness. To be established adequately the psychopathic work in our courts should be so securely founded that it would

go forward of itself, by its own impetus, without being measured by the activity of any single personality. I feel this very strongly. I suspect that, if I were not on hand to continue the work, it would soon collapse. But once we get a proper laboratory, this will no longer be the case.

And yet, after all is said and done, missionary work is usually one man work.

And, perhaps, it is not so bad an idea for a court psychiatrist to be not only a scientific consultant, but "*Amicus Curiae*" as well.

I have given these details of my struggles in the past in hopes that they will inspire others, as Dr. Meyer inspired me, to take up the work of a psychiatric missionary, not necessarily in the criminal courts, but in the schools, in the families of some neighborhood, in the factories and the penitentiaries. They ought also to serve as a measure of encouragement to those physicians and lawyers, who are working along the same lines. Above all, they should serve as a warning that, in work of this kind, it is neither the written nor the spoken word that convinces others, but only the man, the missionary himself, giving his time, giving himself so ungrudgingly that he compels the attention of others to the value of his teaching and the abiding usefulness of his work.

Only—the life of a psychiatric missionary—of any kind of a missionary—is full of heart-burnings, disappointments and delays. Before a man can meet and conquer all these obstacles, he must believe absolutely in the value of what he has to offer, and—he must love his work with his whole heart. Otherwise, long before he achieves success, his heart will break.

THE SEPARATENESS OF MILITARY AND CIVIL JURISDICTION—A BRIEF

HARVEY C. CARBAUGH¹

The military powers given to Congress by the Constitution of the United States were intended to authorize and empower it to bring into existence and maintain for the Army such a system of military law as was then existing in England as a separate institution from the common law system existing there, and that this military system should, in a like manner, be a separate institution from the system of law by which the personal liberty and rights guaranteed by the amendments to the Constitution were to be enforced.

These principles were announced in the *Esmond* case (5 Mackay's Reports, 73), in which the Supreme Court of the District of Columbia, sitting as an appellate court, said:

"These provisions (of the Constitution) contemplate the establishment by Congress of two distinct systems of jurisdiction for the punishment of crimes and that each should be complete and sufficient. In other words, they import that the power of Congress to make rules for the government of the land and naval forces includes powers to establish institutions for the trial and punishment of crimes committed by persons in the land and naval forces, whose action and judgments shall be as conclusive for all purposes as the action and judgments of any other tribunals can be. If such tribunals have actually been established, their judgments must be treated precisely as the judgments of the court of the other system of jurisdiction are treated."

HISTORICAL DEVELOPMENT IN ENGLAND.

The constitutional history of England is a history of a struggle between the people and the Crown. The Crown sought to obtain or to exercise military law both as to the Army and as to civilians in time of peace. The people sought to enforce the common law and their victories are found in the Magna Carta, the Petition of Right, the Bill of Rights and the preservation of the rules of common law favoring individual liberty.

The dispute went to the very existence of military law in England in time of peace by the sovereign's prerogative as to members of the Army or anyone else, and even as to the possibility of its existence there in time of peace by the sovereign's prerogative.

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It would appear that by the approval of the Petition of Right the Crown admitted that it was not in force and that it could not be brought into existence by prerogative of the Crown in time of peace as to the Army, or at all and, as a matter of fact, there was comparatively little contention thereafter that it could be. No one doubted, of course, that it could be brought into existence by Act of Parliament because Parliament was the law making body.

The Ipswich Mutiny in 1689 was the cause of bringing into existence military law in time of peace in order to preserve discipline in the Army. The common law gave the sovereign no power to control his troops. The deserter was treated as an ordinary felon and was tried at the assize by a petty jury on a bill found by a grand jury. At this time the King and the House of Commons were united and both were menaced by a great military power from the ports of Normandy and Brittany. They decided that regular soldiers were indispensable and that their efficiency must be maintained by keeping them under strict discipline. For the sake of public freedom they must, in the midst of freedom, be placed under a despotic rule. They must be subject to a sharper penal code and to a more stringent code of procedure than was administered by the ordinary tribunals.

A short bill was brought in the House of Commons which began by declaring in explicit terms that standing armies and courts-martial were unknown to the law of England, and it was then and there enacted that any man who deserted his colors or mutinied against his commanding officer should be subject to the pain of death or such lighter punishment as a court-martial should deem sufficient.

The first step was made without one dissentient voice in Parliament and without one murmur in the nation toward a change which had become necessary for the safety of the State, yet which every party in the State then regarded with an extreme dread and aversion. Six months after, the power necessary for the maintenance of military discipline was a second time entrusted to the Crown for a short term and by slow degrees finally reconciled the public mind to the names once so odious: viz., a standing army and courts-martial. Thereafter not a session passed without a mutiny bill.

The mutiny act was in the nature of a concession to the Crown. It was granting the sovereign a part of what he had for centuries been insisting upon under his prerogative.

The history of the English Army from the time the first Mutiny Act was passed, to the present, shows that the military law applicable to the Army was understood, and allowed by everyone that the

adoption of the Mutiny Acts authorized the King to enforce the whole body of the rules and principles in the Army, subject to certain exceptions made in the Mutiny Acts themselves.

When the American Revolution came on, the Articles of War were those made by the King under his prerogative so to do, expressly recognized by the Annual Mutiny Acts, and when the colonies began to act the part of absolute sovereignty, their Legislatures, assuming all powers exercised in England by both the King and Parliament, proceeded to enact Articles of War for the government of their respective armies, and thus to bring into existence, so far as their armies were concerned, that part of military law which had in England been applied to the Army in time of peace.

These enactments of the colonies have been followed by successive enactments of Articles of War for the government of the United States. These powers were vested in Congress by the Eighth Section of the Constitution of the United States. As Parliament and the Crown had in England in time of peace under the English Constitution, maintained a military law system which was necessary to secure discipline in the Army co-existent with the common law system and without improperly interfering with its principles relating to personal liberty, our Constitution was framed to secure the same end under the legislative authority of Congress.

MILITARY LAW OF THE UNITED STATES IS A DEPARTURE FROM CIVIL LAW.

In *Dynes v. Hoover*, 20 Howard, 65, the court said, p. 78:

"These provisions of the Constitution show that Congress has the power to provide for the trial and punishment of military and naval offenses in the manner then and now practiced by civilized nations, and that the power to do so is given without any connection between it and the 3rd Article of the Constitution defining the judicial power of the United States; indeed, that the two powers are entirely independent of each other."

Military law is founded on the idea of a departure from the civil law. They are two separate and distinct systems, each occupying its own sphere and having its own separate object in view and are each framed and constituted with reference to their particular objects. The fact that a given rule or principle obtains in one is no evidence that it will be found in the other. Within the civil sphere the rights of the accused are defined by the Federal Constitution which provides that he shall not be subject for the same offense to be twice put in

jeopardy of life or limb, or be compelled in a criminal case to be a witness against himself, or be deprived of life, liberty or property without due process of law; that he shall enjoy the right of a speedy and public trial by an impartial jury of the state or district wherein the crime was committed and shall enjoy the right to be informed of the nature and cause of the accusation; that he has the right to be confronted with witnesses against him; to use compulsory process for obtaining witnesses in his favor and to have the assistance of counsel in his defense.

Within that same sphere all people have the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, and that no lawful and valid order for arrest or search shall be issued, except upon proper cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

Within the military sphere, all are men obliged to obey one man. They are not entitled to any of the rights just enumerated by reason of their being guaranteed in the Federal Constitution or by their being a part of the common law. Whatever rights they enjoy in the military sphere, they have them by reason, alone, of acts of Congress or rules of unwritten military law giving them, for these are the only laws that take any cognizance of men in that sphere.

Under our systems of government, state laws are supreme within the states or sphere and Federal laws are supreme within the Federal government sphere. Likewise, in the military sphere, the Articles of War and special statutes enacted by Congress and the applicable unwritten military law are the supreme law therein.

PRINCIPLES ESTABLISHED BY DECISIONS OF FEDERAL COURTS.

The power of the Federal Civil Courts in respect to the military courts has been the subject of repeated investigations, so that the principles of the separateness of the two systems have become well established. These principles may be stated as follows:

1. *Courts-martial are lawful tribunals existing by the same authority as a Federal Court.*

Judge Wallace, in delivering the opinion of the court in *Ex parte Davison* (21 Federal Reporter 620), said:

"Courts-martial are lawful tribunals existing by the same authority that this court is created by, have as plenary jurisdiction over offenses by the law military as this court over controversies committed to its cognizance and within their special and more limited sphere are entitled to ask untrammelled an exercise of their powers."

See also *Rose ex rel. Carter v. Roberts* (C. C. A., Second Circuit), 99 Fed. 948; and *Carter v. Roberts*, 177 W. S. 496, and *Carter v. McClaughry*, 183 W. S. 365 (p. 380), in which Mr. Justice Fuller, in speaking for the Supreme Court of the United States, said:

"The Eighth Section of Article One of the Constitution provides that the Congress shall have power to make rules for the government and regulation of the land and naval forces, and in the exercise of that power Congress has enacted rules for the regulation of the Army known as the Articles of War (Revised Statutes, par. 1342). Every officer, before he enters on the duties of his office, subscribes to these Articles and places himself within the power of courts-martial to pass on any offense which he may have committed in contravention to them. Courts-martial are lawful tribunals with authority to finally determine any case over which they have jurisdiction, and their proceedings, when confirmed, as provided, are not open to review by the civil tribunal, except for the purpose of ascertaining whether the Military Court had jurisdiction of the person and subject matter, and whether, though having such jurisdiction, it had exceeded its power in the sentence pronounced."²

2. *The power of a court-martial to arrive at a final determination is as inherent as that of any other court constituted under the Constitution in Acts of Congress.*

In re McVey (23 Federal Reporter, 878), the court said:

"It is not denied that within the sphere of their jurisdiction the judgments or sentences of military courts are as final and conclusive as those of civil tribunals of last resort."

In Ex parte Henderson (11 Federal Cases, 349), the court said:

"Courts-martial are lawful tribunals existing by the same authority that other courts exist. Their jurisdiction, it is true, is limited and special being confined to military persons charged with military offenses; over such persons charged with offenses defined by military law, their jurisdiction is complete. They are indeed liable to the controlling authority

²In *Swaim v. United States*, 165 U. S. 553, the sentence, being in the opinion of the reviewing authority not correct, was returned for revision, and it is contended that such proceedings are void. The court said:

"This court in *Ex parte Reed*, 100 U. S. 13, held that such regulations, to-wit, the Navy Regulations, have the force of law, but that as the court-martial had jurisdiction over the person and the case, its proceedings could not be collaterally impeached for any mere error or irregularity committed within the sphere of its authority; that the matters complained of were within the jurisdiction of the court-martial; that the second sentence was not void; and, accordingly, the application for a writ of habeas corpus was denied. We agree with the Court of Claims that the ruling in *Ex parte Reed*, in principle, decides the present question.

"As we have reached the conclusion that the court-martial in question was duly convened and organized, and that the questions decided were within its lawful scope of action, it would be out of place for us to express any opinion on the propriety of the action of that court in its proceedings and sentence. If, indeed, as has been strenuously urged, the appellant was harshly dealt with, and a sentence of undue severity was finally imposed, the remedy must be found elsewhere than in the courts of law."

which the civil courts have at all times exercised of preventing them from exceeding the jurisdiction given to them. * * * In respect to persons subject to their authority and charged with offenses subject to their jurisdiction, the civil courts do not sit as a court of error to review the regularity of their proceedings. Informality, therefore, in the proceedings of courts-martial cannot be remedied or inquired into by a civil court. The groundwork of the jurisdiction and the extension of the powers of courts-martial are to be found in the Articles of War * * * but these articles do not alone constitute the military code. They are, for the most part, silent on all that related to the procedure of military tribunals to be organized by them. This procedure is founded upon the usage and customs of war, upon the regulations prescribed by the President, upon the authority of Congress and upon old practices in the Army, as to all of which points common law judges have no opportunity, either from their law books or from the course of their experience, to inform themselves. It would, therefore, be most illogical, to say nothing of the impediments to military discipline, which would thereby be interposed to apply to the proceedings of courts-martial those rules which are applicable to another and different course of practice (Lord Denman's Opinion, *in re Poe*, 5 B. & A. 688)."⁸

3. *Federal Courts will only inquire to ascertain whether the Courts-martial had jurisdiction of the person and the subject matter and whether the judgment rendered and the sentence imposed were such as the court had power to render and impose under the law.*

Among the powers conferred upon Congress by the Eighth Section of the First Article of the Constitution, are the following:

"To provide and maintain a Navy," "To make rules for the government of the land and naval forces." The Eighth Amendment which requires a presentment of a grand jury in cases of capital or otherwise infamous crime, expressly excepts from its operation "cases arising in the land and naval forces." And by the Second Section of the Second Article of the Constitution it is declared that "The President shall be commander-in-chief of the Army and Navy of the United States, and of the militia of the several states when called into the actual service of the United States."

These provisions show that Congress has the power to provide for the trial and punishment of military and naval offenses in the manner then and now practiced by civilized nations; and that the power to do so is given without any connection between it and the Third Article of the Constitution, that the two powers are entirely independent of each other.

The sentence, when confirmed, is altogether beyond the jurisdiction or inquiry of any civil tribunal whatever, unless it shall be in a case in which the court had not jurisdiction over the subject matter or charge, or one in which, having jurisdiction over the subject

⁸See also Esmond's case (5 Mackay's Reports, 73).

matter, it has failed to observe the rules prescribed by the statute for its exercise. In such cases, as has just been said, all of the parties to such illegal trial are trespassers upon a party aggrieved by it, and he may recover damages from them on a proper suit in a civil court, by the verdict of a jury. Courts-martial derive their jurisdiction and are regulated with us by an Act of Congress, in which the crimes which may be committed, the manner of charging the accused, and of trial, and the punishments which may be inflicted, are expressed in terms; or they may get jurisdiction by a fair deduction from the definition of the crime that it comprehends, and that the legislature meant to subject to punishment one of a minor degree of a kindred character, which has already been recognized to be such by the practice of courts-martial in the Army and Navy services of nations, and by those functionaries in different nations to whom has been confided a revising power over the sentences of courts-martial. With the sentences of courts-martial which have been convened regularly, and have proceeded legally, and by which punishments are directed, not forbidden by law, or which are according to the laws and custom of the sea, civil courts have nothing to do, nor are they in any way alterable by them. If it were otherwise, the civil courts would virtually administer the rules and articles of war, irrespective of those to whom that duty and obligation has been confided by the laws of the United States, from whose decisions no appeal or jurisdiction of any kind has been given to the civil magistrate or civil courts. But we repeat, if a court-martial has no jurisdiction over the matter of the charge it has been convened to try, or if it shall inflict a punishment forbidden by the law, though its sentence shall be approved by the officers having a revisory power of it, civil courts may, on an action by a party aggrieved by it, inquire into the want of the court's jurisdiction, and give him redress. (*Dynes v. Hoover*, 20 Howe 65.)

In *Ex parte Reed* (100 U. S., 13), the court held, as to the proceedings of a naval court-martial,

"That the court had jurisdiction over the person and the case. It is the organism provided by law, and clothed with the duty of administering justice in this class of cases. * * * Its judgments when approved as required, rest on the same basis and are surrounded by the same consideration which give conclusiveness to the judgment of other legal tribunals including as well the lowest as the highest under like circumstances."⁴

⁴See also *Rose Ex rel. Carter v. Roberts*, 99 Fed. 948, Circuit Court of Appeals for the Second Circuit and cases therein cited.

The court said, *in re Bogart*, (2 Sawyer, 396):

"If the court-martial has jurisdiction to try the offense charged, then the prisoner is lawfully held for trial. All else relates to the exercise of jurisdiction with which this court cannot interfere. We cannot enter into any examination of the merits of the charges. * * * Has the court-martial ordered, the power to hear and decide upon the charges and specifications made by the Secretary of the Navy? If so, that ends our inquiry."⁵

4. *Federal Courts exercise no supervisory corrective power over Courts-martial.*

The court said, *in re Grimley* (137 U. S., 147):

"Civil courts exercise no supervisory or correcting power over the proceedings of a court-martial and no mere errors in their proceedings are open to consideration. The single inquiry, the test, is jurisdiction; that being established, the habeas corpus must be denied and the petitioner remanded."

The court said *in re White* (17 Federal Reporter, 724):

"The jurisdiction is clearly conferred upon the courts-martial and it is exclusive. This covers the whole ground. Jurisdiction to determine whether a part is guilty of the offense necessarily involves the jurisdiction to determine what constitutes the offense under the statute; that is to say, jurisdiction to construe the statute and to adjudge what under the statute

⁵In *Barrett v. Hopkins* (Circuit Court for the District of Kansas), 7 Federal Reporter, p. 313, McCrary, Chief Justice, says:

"I take it to be very clear that the question of the jurisdiction of a general court-martial may always, upon the application of any party aggrieved by its judgment, be inquired into by the civil courts. Courts-martial are special tribunals, with jurisdiction limited to a particular class of cases. If such a court exceeds its authority, and undertakes to try and punish a person not within its jurisdiction, or to punish a person within its jurisdiction for an offense not within its jurisdiction, its judgment is void, and may be so declared by any court having jurisdiction of the proper parties and of the subject matter. The decision of such a tribunal, in a case clearly without its jurisdiction, does not possess that apparent validity which will protect the officer who executed it. 'The court and the officers are all trespassers.' *Wise v. Withers*, 3 Cranch, 331. The rule that civil courts may inquire into the jurisdiction of a court-martial in an action by a party aggrieved by its judgment, and give him redress is settled by the decision of the Supreme Court of the United States in *Dynes v. Hoover*.

"It is quite clear that this court has no authority to issue the writ of habeas corpus to bring up body of a person convicted and sentenced by a court of competent jurisdiction; but it is equally clear that it has jurisdiction to grant the writ, and discharge the prisoner, if it appears that an inferior court has transcended its powers. The true line of distinction between the two classes of cases will appear by reference to . . . authorities.

"To say that in this case the court-martial had jurisdiction of the prisoner at the time the crime was committed, and therefore retained jurisdiction for the purpose of trying him after his term of enlistment expired, is only to state the main argument in support of the legality of the sentence; it is not to raise a question as to the jurisdiction of this court. I am, therefore, clearly of the opinion that this court has full powers to inquire into the jurisdiction of the court-martial, of whose judgment the prisoner complains."

constitutes a good defense, etc. * * * If the military authorities proceed regularly within their jurisdiction, we cannot interfere, no matter what errors may be committed in the exercise of its lawful jurisdiction."⁶

5. *Courts-martial have power to adjudicate finally and conclusively matters within their jurisdiction.*

In *Mullan v. United States* (212 U. S., 516), the court said:

"The civil courts are not courts of error to review the proceedings and sentences of courts-martial where they are legally organized, and have jurisdiction of the offenses and the person of the accused and have complied with the statutory requirements governing their proceedings."^{6a}

6. *The writ of habeas corpus is not a writ of error nor can it be made a reviewer of facts.*

In *Ex parte Yarbrough* (110 U. S. 651), the court said:

"It is, however, to be carefully observed that this principle does not authorize the court to convert the writ of habeas corpus into a writ of error by which the errors of law committed by the court that passed the sentence may be reviewed here, for if that court had jurisdiction of the party and of the offense for which he was tried, and has not exceeded its powers in the sentence which it pronounces, this court can inquire no further."⁷

⁶In *Wales v. Whitney*, 114 U. S., p. 564, the Supreme Court, speaking through Mr. Justice Miller, says: "But neither the Supreme Court of the District nor this court has any appellate jurisdiction over the naval court-martial, nor over offenses which such a court has power to try. Neither of these courts is authorized to interfere with it in the performance of its duty, by way of a writ of prohibition or any order of that nature. The civil courts can relieve a person from imprisonment under order of such court only by writ of habeas corpus and then only when it is apparent that it proceeds without jurisdiction. . . . The writ of habeas corpus is not a writ of error, though in some cases in which the court issuing it has appellate power over the court by whose order the petitioner is held in custody it may be used with the writ of certiorari for that purpose. In such a case, however, as the one before us it is not a writ of error. Its purpose is to enable the court to inquire, first, if the petitioner is restrained of his liberty. If he is not, the court can do nothing but discharge the writ. If there is such restraint, the court can then inquire into the cause of it, and if the alleged cause be unlawful it must then discharge the prisoner."

^{6a}See also *Dynes v. Hoover*, 20 Howard, 65; *Ex parte Reed*, 100 U. S., 13; *Swain v. U. S.*, 165 U. S., 553.

⁷In *Johnson v. Sayre*, 158 United States, 109, at page 118, the court speaking by Mr. Justice Gray says:

"The court-martial having jurisdiction of the person accused and of the offense charged, and having acted within the scope of its lawful powers, its decision and sentence cannot be reviewed or set aside by the civil courts, by writ of habeas corpus or otherwise."

In *Keyes v. The United States*, 109 U. S. 336, at page 340, the court by Mr. Justice Blatchford says:

"That the court-martial, as a general court-martial, had cognizance of the charges made, and had jurisdiction of the person of the appellant, is not disputed. This being so, whatever irregularities or errors are alleged to have occurred in the proceedings, the sentence of dismissal must be held valid when it is questioned in this collateral way. . . . This doctrine has been applied by this court to the judgment and sentence of a naval court-martial, which was sought to be reviewed on a writ of habeas corpus."

To the same effect it was held in *Ex parte Siebold* (100 U. S., 375): "That a writ of habeas corpus could not be used as a mere writ of error." (*Price v. McCarty*, 89 Federal Reporter, 84.)

"Moreover, it is a well settled rule that the writ of habeas corpus was not framed to retry issues of fact or to review proceedings of a legal tribunal." (Church on Habeas Corpus, 350.)

7. *To overthrow the sentence of a courts-martial, it must be void ab initio.*

In *United States v. Pridgeon* (153 U. S., 48 p. 58), the court held:

"Habeas corpus proceedings being a collateral attack of a civil nature, it must clearly and affirmatively appear that the indictment charged an offense over which the court had no jurisdiction, so that its sentence was void, or, in other words, the indictment must be so fatally defective on its face as to be open to collateral attack after trial and conviction, or that the sentence that the court pronounced thereon was void."

Mr. Justice Marshall, in delivering the opinion of the court in *Ex parte Tobias Watkins* (3 Pet., 193), held:

"That the question of whether an offense was committed, that is, whether the indictment did or not show that an offense had been committed, was a question which the district court was competent to decide. If its judgment was erroneous, still it is a judgment and until reversed cannot be disregarded."

In *Dynes v. Hoover* (20 Howard, 81), the court held:

"With the sentences of courts-martial which have been convened regularly and have proceeded legally and by which punishments are directed, not forbidden by law, or which are according to the laws and customs of the sea, civil courts have nothing to do, nor are they in any way alterable by them."

In *Dynes v. Hoover* (supra), the court expressly held:

"It is in the nature of an appeal to the officer ordering the court who is made by the law the arbiter of the legality and propriety of the court's sentence; and when such sentence is confirmed, it is beyond the jurisdiction or inquiry of any civil tribunal whatsoever, unless it shall be shown that the court had no jurisdiction, or in which, having jurisdiction, it has failed to observe the rules prescribed by the statute for its exercise."⁸

⁸In *Grafton v. United States*, 206 United States, 333, the court by Mr. Justice Harlan, at page 345, says:

"We assume as indisputable, on principle and authority, that before a person can be said to have been put in jeopardy of life or limb the court in which he was acquitted or convicted must have had jurisdiction to try him for the offense charged. It is alike indisputable that if a court-martial has jurisdiction to try an officer or soldier for a crime, its judgment will be accorded the finality and conclusiveness as to the issues involved which attend the judgments of a civil court in a case of which it may legally take cognizance. In *Ex parte Reed*, 100 U. S., 13, 23, the court, referring to a court-martial, said: 'The court

8. *A Court-martial will judge as to whether an offense has been committed and will determine all collateral matters.*

In *Swaim v. United States* (165 U. S., 553), the court held:

"It is within the power of the President of the United States as Commander-in-Chief to validly convene a general court-martial even where the commander of the accused officer to be tried, is not the accuser. Where a civilian makes accusation against an officer and the President appoints a court of inquiry to examine the accusation and where upon the report of such court, the Secretary of War directs an officer to prepare charges against the accused and the President appoints a general court-martial to pass upon such charges, such routine orders which led to the trial of the accused cannot be construed as making the President his accuser or prosecutor. Where some of the members of the court were inferior in rank to the accused, the presumption must be that the President in detailing the officers to compose the court-martial acted in pursuance of law and the sentence cannot be collaterally attacked through inquiry as to whether the trial by officers inferior in rank to the accused was or was not avoidable. The decision of the court-martial in determining the validity of a challenge to a member for cause stated to the court cannot be viewed by a civil court in a collateral action.

"The action of a court-martial in permitting a person to act as Judge Advocate, who was not appointed by the convening officer of the court-martial, nor sworn to the faithful performance of his duties; in receiving oral and secondary evidence of an account when books of original entry were available; in receiving evidence to implicate the accused in signing false certificates relating to money, which formed no part of the subject matter of the charges on trial; in refusing to permit evidence as to the bad character of the principal witness for the prosecution; in refusing to hear the testimony of a material witness for the defense, cannot be

had jurisdiction over the person and the case. It is the organism provided by law and clothed with the duty of administering justice in this class of cases. Having had such jurisdiction, its proceedings cannot be collaterally impeached for any mere error or irregularity, if there were such, committed within the sphere of its authority. Its judgments, when approved as required, rest on the same basis, and are surrounded by the same considerations which give conclusiveness to the judgments of other legal tribunals, including as well the lowest as the highest, under like circumstances. The exercise of discretion, within authorized limits, cannot be assigned for error and made the subject of review by an appellate court."

"In *Carter v. Roberts*, 177 U. S. 496, 498, the court . . . said: 'Courts-martial are lawful tribunals, with authority to finally determine any case over which they have jurisdiction, and their proceedings, when confirmed as provided, are not open to review by the civil tribunals, except for the purpose of ascertaining whether the military court had jurisdiction of the person and subject matter, and whether, though having such jurisdiction, it had exceeded its powers in the sentence pronounced.' This language was repeated in *Carter v. McClaghry*, 183 U. S. 365, 380.

"It thus appears to be settled that the civil tribunals cannot disregard the judgments of a general court-martial against an accused officer or soldier, if such court had jurisdiction to try the offense set forth in the charge and specifications; this, notwithstanding the civil court, if it had first taken hold of the case, might have tried the accused for the same offense or even one of higher grade arising out of the same facts."

reviewed collaterally and do not affect the legality of the sentence. Such questions are merely those of procedure, and the court-martial having jurisdiction of the person accused and of the offense charged, and having acted within the scope of its lawful powers, its proceedings and sentence cannot be reviewed or set aside by the civil court and the conclusions of a court-martial as to whether an offense has been committed cannot be controlled or reviewed by a civil court. It was within the authority of the President to twice return the record of the proceedings of the court-martial to the court-martial, urging a more severe sentence than the court had imposed.

"It is strongly urged that no offense under the Sixty-second Article of War was shown by the facts, and that the Court of Claims should have so found and have held the sentence void. If this position were well taken, it would throw upon the civil courts the duty of considering all the evidence adduced before the courts-martial and of determining whether the accused was guilty of conduct to the prejudice of good order and military discipline in violation of the Articles of War.

"But, as the authorities heretofore cited show, this is the very matter that falls within the province of courts-martial, and in respect to which their conclusions cannot be controlled or reviewed by the civil courts. As we said in *Smith v. Whitney* (116 U. S., 178), of questions not depending upon the construction of the statutes, but upon unwritten military law or usage, within the jurisdiction of courts-martial, military or naval officers, from their training and experience in the service, are more competent judges than the courts of common law. * * * Under every system of military law for the government of either land or naval forces, the jurisdiction of courts-martial extends to the trial and punishment of acts of military or naval officers which tend to bring disgrace and reproach upon the service of which they are members, whether those acts are done in the performance of military duties, or in a civil position, or in a social relation, or in a private business."

In *United States v. Fletcher* (148 U. S., 84), will be found observations to the same effect.

In *re McVey* (23 *Federal Reporter*, 878), the court said:

"The only authority of the civil courts is to answer whether the military authorities are proceeding regularly within their jurisdiction. If they are, we cannot interfere, no matter what errors may be committed in the case of a lawful jurisdiction."

In *re Eckart* (166 U. S., 481), it was held:

"That a Trial Court possessing general jurisdiction of the class of offenses within which is embraced the crime set forth in the indictment, is possessed of authority to determine the sufficiency of the indictment, and that in adjudging it to be sufficient, it acts within its jurisdiction and a that in adjudging it to be valid and sufficient, it acts within its jurisdiction and a conviction and judgment thereunder cannot be questioned on habeas

corpus because of a lack of certainty or other defect in the indictment of the facts averred to constitute a crime."

9. *The jurisdiction of a court-martial having attached it retains the same.*

The Supreme Court, in the case of *Coleman v. Tennessee* (97 U. S., 509), held, that a soldier who had been convicted of murder and sentenced to death by a general court-martial in May, 1865, but the execution of whose sentence had been meanwhile deferred, by reason of his escape and the pendency of civil proceedings in his case, might at the date of the ruling (October Term, 1878), "Be delivered up to the military authorities of the United States, to be dealt with as required by law."

More recently in the same case (May, 1879, 16 Opinions, 349), it has been held by the Attorney General that a death sentence might legally be executed, notwithstanding the fact that the soldier had meanwhile been discharged from the service; such discharge, while formally separating the party from the army, being viewed as not affecting his legal status as a military convict. But in view of all the circumstances of the case, it was recommended that the sentence be commuted to imprisonment for life or a term of years. The sentence was finally commuted to imprisonment for twenty years.

In the case of *Bogart* (2 Sawyer, 397), who was detained for trial before a naval court-martial for embezzlement, in violation of the Act of March 2, 1863, it was held in the opinion of the court discharging the writ of habeas corpus granted for alleged illegal detention, that a person charged with embezzlement under the Act cited, committed while employed in the naval service and afterwards dismissed or discharged, was liable under the second section of said Act to be arrested and tried by court-martial in the same manner as if he had not been discharged or dismissed (see concluding portion of Article 14, Section 1624, Revised Statutes).

Said second section reads as follows:

"And if any person, being guilty of any of the offenses aforesaid, while in the military service of the United States, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed."

In the case of *Barrett v. Hopkins* (7 Federal Reporter, 312), the court held that the jurisdiction of the court-martial having once attached by arrest of the prisoner, it retains jurisdiction for all

purposes of trial, judgment and execution. In delivering the opinion of the court, Circuit Judge McCreary said:

"That the prisoner was a soldier of the United States Army at the time he committed the offense, and that he was lawfully arrested and imprisoned by military authority, and remained lawfully in the custody of the military from September 6, 1878, to February 1, 1879, is admitted. But it is insisted that on the last named day he ceased to be a soldier, by the expiration of his five years' term of enlistment, and became a citizen and therefore entitled to trial by jury. * * *

'The general rule is that when the jurisdiction of a court attaches in a particular case by the commencement of proceedings and the arrest of the accused, it will continue for all the purposes of the trial, judgment and execution. * * * The general rule is grounded in sound reason. Many of the greatest military offenses are not cognizable by the courts of common law. A soldier might be guilty, on the eve of the expiration of his term of enlistment of the grossest insult to his officers, or of disobedience of orders, or of desertion in the face of an enemy, and if he could not be held for trial after the end of his term, he would escape punishment altogether. To hold that in every such case the jurisdiction of a court-martial would cease with the expiration of the term of enlistment, would be to shield the guilty from punishment, to encourage crime, to greatly demoralize the military service. The jurisdiction, therefore, in such cases is to be maintained upon the highest considerations of public policy. * * *

"The jurisdiction in the cases named, and in many others of like character, must therefore be upheld upon the ground first mentioned, to wit: that the court-martial acquired it by the proper commencement of proceedings, and could not be divested of it by any subsequent change in the status of the accused; and this reason applies as well to a case where the crime is one known to the common or statute law, as to one in which the offense is purely military. In both the jurisdiction is maintained, after the end of the term of the enlistment, upon the same ground. This conclusion is supported by judicial interpretation, in the only cases, so far as I know, in which the case has arisen."⁹

Upon establishing the military prison at Fort Leavenworth, Kansas, Congress, in the Act of March 3, 1873, Sec. 1361, R. S., provided that:

"All prisoners under confinement in said military prison undergoing sentence of courts-martial shall be liable to trial and punishment by courts-martial under the rules and Articles of War, for offenses committed during said confinement."

The statute was judicially passed upon by the United States District Court of Kansas, in the case of *Ira Wildman* (Federal Cases, 17653-a), who had been dishonorably discharged in connection with

⁹*U. S. v. Travers*, 2 Wheeler, 509; *In re Dew*, 25 L. R., 540; *In re Bird*, 2 Sawyer, 33; *In re Walker* 3 Am. Jurist 281.

the sentence of imprisonment and had been tried under the statute quoted by a court-martial for certain offenses and sentenced to additional imprisonment. Application for release on writ of habeas corpus was made, but denied on the ground that though no longer in service he was a military prisoner and for purposes of discipline and punishment connected with the military service, that his case is to be regarded as one arising in the land forces in the sense of the Constitution, and therefore one in regard to which Congress may exercise its power of regulation and government.

In re Craig (70 Federal Reporter, 971), a similar case, the court held that:

"Prisoners under confinement in military prisons undergoing sentence of courts-martial, although dishonorably discharged, are nevertheless liable to trial and punishment for offenses they may commit during their confinement, and the Act of Congress of March 3, 1873, permitting such trials is not in conflict with the fifth amendment to the Constitution."

10. *A Writ of Prohibition will not lie as to court-martial practice.*

In *Smith v. Whitney* (116 U. S., 167), the court said:

"If a court-martial has jurisdiction of the principal charge and some or all of the specifications under it, the addition of a second charge with its specifications affords no ground for a writ of prohibition. * * * This being the first application to a court of the United States for a writ of prohibition to a court-martial, to order its issue in the present case would be to declare that an officer of the navy, who, while serving by appointment of the President as chief of a bureau in the Navy Department, makes contracts or payments, in violation of law, in disregard of the interests of the government, and to promote the interests of contractors, cannot lawfully be tried by a court-martial composed of naval officers, and by them convicted of scandalous conduct, tending to the destruction of good morals, and to the dishonor of the naval service. This we are not prepared to do, being clearly of opinion that such conduct of a naval officer is a case arising in the naval forces, and therefore punishable by court-martial under the articles and regulations made or approved by Congress in the exercise of the powers conferred upon it by the Constitution, to provide and maintain a navy, and to make rules for the government and regulation of the land and naval forces, without indictment or trial by jury.

"Whether the Supreme Court of the District of Columbia may issue a writ of prohibition to a court-martial is a question of great importance, not hitherto adjudged by this court and we are not inclined in the present case either to assert or deny the existence of the power, because, upon settled principles assuming the power to exist, no cause is shown for the exercise of it. In any event such a writ never can issue, unless it clearly appears that the inferior court is about to exceed its jurisdiction. It cannot be made to serve the purpose of a writ of error or certiorari to correct mistakes of that court in deciding a question of law or fact within its juris-

diction, and this court has repeatedly recognized the general rule that the acts of a court-martial, within the scope of its jurisdiction and duty cannot be controlled or reviewed in the civil courts by writ of prohibition or otherwise.¹⁰

"Under every system of military law for the government of either land or naval forces, the jurisdiction of courts-martial extends to the trial and punishment of acts of military or naval officers which tend to bring disgrace and reproach upon the service to which they are members, whether those acts are done in the performance of military duties, or in a civil position, or in a social relation, or in private business."

11. *The proceedings of a Court-martial will not be reviewed by a writ of Certiorari.*

In re Vidal (179 U. S., 126), the court said:

"The Supreme Court is not empowered to review the proceedings of a military tribunal by certiorari nor are such tribunals courts with jurisdiction in law or equity within the meaning of those terms as used in the Third Article of the Constitution and the question of the issue of the writ of certiorari in the exercise of inherent general power cannot arise in respect of them."¹¹

12. *Courts-martial form no part of the judicial system of the United States and their proceedings, within the limits of their jurisdiction, cannot be controlled or revised by the civil courts.*

In Kurtz v. Moffit (115 U. S., 487), the court said:

"In the United States, the line between civil and military jurisdiction has always been maintained. The Fifth Article of Amendment of the Constitution, which declares that no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, expressly excepts cases arising in the land or naval forces, and leaves such cases subject to the rules for the government and regulation of those forces which, by the Eighth Section of the First Article of the Constitution, Congress is empowered to make. Courts-martial form no part of the judicial system of the United States and their proceedings, within the limits of their jurisdiction, cannot be controlled or revised by the civil courts."¹²

¹⁰See also *Ex parte Reed* (100 U. S., 13); *Dynes v. Hoover* (20 Howard, 65, 82, 83); *Ex parte Mason* (105 U. S., 696); *Keyes v. United States* (109 U. S., 336); *Wales v. Whitney* (114 U. S., 564, 570); *Kurtz v. Moffit* (115 U. S., 487); *In re Bogart* (2 Sawyer, 396); *Wise v. Withers* (3 Cranch, 331); *Meade v. Deputy Marshal of Virginia* (1 Brock., 324); *In re White* (9 Sawyer, 49); *Barrett v. Hopkins* (2 McCrary, 129); and *Grant v. Gould* (2H. Bl. 69).

¹¹See also *United States v. Sugar* (243 Federal Reporter, 423, p. 431).

¹²*In Mullan v. United States*, 212 United States, 516.

See also *Dynes v. Hoover* (20 Howard, 65); *Ex parte Mason* (105 U. S., 696); *Wales v. Whitney* (114 U. S., 564).

13. *The judgment of a Court-martial, in a case not within its jurisdiction, does not protect the officer who executes it.*¹³

¹³In *Dynes v. Hoover*, 20 Howard, 65, at page 78, by Mr. Justice Wayne, says:

"Among the powers conferred upon Congress by the 8th section of the first article of the constitution are the following: 'to provide and maintain a navy;' 'to make rules for the Government of the land and naval forces.' And the 8th amendment, which requires a presentment of a grand jury in cases of capital or otherwise infamous crime, expressly excepts from its operation 'cases arising in the land or naval forces.' And by the 2d section of the 2d article of the constitution it is declared that . . . 'The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States.'

"These provisions show that Congress has the power to provide for the trial and punishment of military and naval offenses in the manner then and now practiced by civilized nations; and that the power to do so is given without any connection between it and the 3d article of the constitution defining the judicial power of the United States; indeed, that the two powers are entirely independent of each other.

" . . . The court was lawfully constituted, the charge made in writing, and *Dynes* appeared and pleaded to the charge.

" . . . In both cases, the law is, that an officer executing the process of a court which has acted without jurisdiction over the subject matter becomes a trespasser, it being better for the peace of society, and its interests of every kind, that the responsibility of determining whether the court has or has not jurisdiction should be upon the officer, than that a void writ should be executed. This court, so far back as the year 1806, said, in the case of *Wise and Withers*, 3 Cranch, 331, p. 337 of that case: 'It follows, from the opinion, that a court-martial has no jurisdiction over a justice of the peace as a militiaman; he could never be legally enrolled; and it is a principle, that a decision of such a tribunal, in a case clearly without its jurisdiction, cannot protect the officer who executes it. The court and the officer are all trespassers.'

In *Hamilton v. McClaughry*, 136 Federal Reporter, p. 447, Pollock, District Judge, says:

"In approaching a consideration of this question, a few of the fundamental principles of law may be stated. It is the settled law that courts-martial are courts of inferior and limited jurisdiction. No presumptions in favor of their exercise of jurisdiction are indulged. To give effect to their judgments imposed, it must be made to clearly and affirmatively appear that the court was legally constituted, that it had jurisdiction of the person and offense charged, and that its judgment imposed is conformable to the law. . . . Again, so jealous are all English-speaking nations of the liberty of their subjects, where a respondent in habeas corpus admits the restraint charged against him, he must justify by basing his right of restraint upon the exercise of some provision of positive law binding upon him, or the writ must issue and the person restrained have his liberty. It follows, therefore, notwithstanding the judgment of conviction by the military court set forth in the return of respondent and admitted by petitioner, if, as claimed by counsel for petitioner, the facts essential to a valid exercise of the military power conferred by the fifty-eighth article of war, to-wit, the then existence of a state of war, insurrection or rebellion in China, the place where the offense was committed and the trial had, is not shown, the writ must go and petitioner be granted his liberty."

In *Noble v. Union River Logging R. R. Co.*, 147 United States, p. 173, the court, by Mr. Justice Brown, says:

"It is true that in every proceeding of a judicial nature, there are one or more facts which are strictly jurisdictional, the existence of which is necessary to the validity of the proceedings, and without which the act of the court is a mere nullity; such, for example, as the service of process within the state upon the defendant in a common law action, . . . ; or a court-martial proceeds and

14. *The reviewing officer approving or disapproving the sentence of a Court-martial acts in a judicial capacity.*

In *Runkle v. United States* (122 U. S., 543), the court said:

"Undoubtedly, the President, in passing upon the sentence of a court-martial, and giving to it the approval without which it cannot be executed, acts judicially. The trial, finding, and sentence are the solemn acts of a court organized and conducted under the authority of, and according to the prescribed forms of law. It sits to pass upon the most sacred questions of human rights that are ever placed on trial in a court of justice; rights, which, in the very nature of things, can neither be exposed to danger, nor subjected to the uncontrolled will of any man, but which must be adjudged according to law. And the act of the officer who reviews the proceedings of the court, whether he be the commander of the fleet or the President, and without whose approval the sentence cannot be executed, is as much a part of this judgment, according to law, as is the trial or the sentence. When the President, then, performs this duty of approving the sentence of a court-martial dismissing an officer, his act has all the solemnity and significance of the judgment of a court of law."

"Accordingly in those cases in which the approval of the sentence is signed by the Secretary of War alone, and the personal action of the President in the matter is nowhere mentioned the authentication will not be sufficient unless it is authenticated in a way to show otherwise than argumentatively that it is the result of the judgment of the President himself and that it is not a mere departmental order which might or might not have attracted his personal attention."

sentences a person not in the military or naval service, *Wise v. Withers*, 3 Cranch, 331. In these and similar cases the action of the court or officer fails for want of jurisdiction over the person or subject matter. The proceeding is a nullity, and its invalidity may be shown in a collateral proceeding."

In *Dow v. Johnson*, 100 United States, p. 189, the court, speaking by Mr. Justice Field, says:

"A soldier cannot justify on the ground that he was obeying the orders of his superior officer, if such orders were illegal and not justified by the rules and usages of war, and such that a person of ordinary intelligence would know that obedience would be illegal and criminal," citing *Wise v. Withers*, 3 Cranch, 331.

In the same case, the court says:

"It is not to be questioned, said Phelps, J., that, if a military officer transcend the limits of his authority and take cognizance of a matter not within his jurisdiction, his acts are void, and will afford no justification to those who act under him. (*Darling v. Bowen*, 10 Vt. 148.) (Mr. Justice Clifford in a dissenting opinion.)

In *Wise v. Withers*, 3 Cranch, 331 (1 Curtis p. 598), the Supreme Court of the United States, through Chief Justice Marshall, said:

"The law furnishing no justification for a departure from the plain and obvious import of the words, the court must, in conformity with that import, declare that a justice of the peace, within the District of Columbia, is exempt from the performance of militia duty.

"It follows, from this opinion, that a court-martial has no jurisdiction over a justice of the peace, as a militia-man; he could never be legally enrolled; and it is a principle, that a decision of such a tribunal, in a case clearly without its jurisdiction, cannot protect the officer who executes it. The court and the officer are all trespassers."

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER AND WILLIAM G. HALE

COURT MARTIAL JURISDICTION.

Frank v. Murray, 248 Fed. 865.

When does one's connection with the army become such as to render him liable to court martial? It was held in this case that under the Selective Draft Act, one called into military service is from the date he was called subject to military law and to punishment as a deserter if he fails or refuses to obey the summons to join the army. The question came up on a habeas corpus proceeding. The court said: "There is no room for doubt that under the Selective Draft Act, and the Articles of War, the appellant having been drafted into the service of the United States, he became from the date of said draft, and certainly after acceptance and notice, subject to the laws and regulations governing the Regular Army, including the Articles of War."

ESPIONAGE ACT.

United States v. Kraft, 249 Fed. 919. *Inciting insubordinates, etc., in military forces.*

The Espionage Act, of June 15, 1917, provides, among other things, that "whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny or refusal of duty in the military or naval forces of the United States" shall be guilty of crime.

The defendant was charged with a violation of this provision in that he did say to a certain corporal in the U. S. Army: "I can't see how the government can compel troops to go to France." "If it was up to me, I'd tell them to go to hell," etc. Held: Conviction sustained. It is not necessary for the government to prove that the words actually caused insubordination or disloyalty or mutiny. It is enough that they were spoken with that intent. The question of willful intent is one for the jury.

The jury were instructed that if the words were spoken in sudden anger or without deliberation, they should acquit. The verdict must be taken therefore as a finding that they were not so spoken. This defendant was a prominent man of affairs and spoke from a platform in a populous city to a large crowd. He thus spoke with deliberation and must be held to have intended the natural and probable consequence of his words.

EVIDENCE.

People v. Reilly (N. Y.), 120 N. E. 113. *Confession—Stipulation not to use evidence against accused.*

Defendant was one of a group of men in a drinking place in New York City. A controversy arose and growing out of this, Tynan, one of the group, was shot. Defendant was convicted of assault in the second degree. On the same occasion, Bambrick, another of the party, shot and killed a policeman. He was

convicted of murder and later a petition for his pardon was presented. The district attorney in the attempt to secure further data for the governor, interviewed the defendant, Reilly, and promised him that any statement he made would not be used against him. He thereupon made a long statement.

Held: (1) The statement was not a confession, because exculpatory in its nature. (2) A part of it is inconsistent with the statement made by him in the present trial, but the district attorney should not have been permitted to violate his stipulation with the defendant. It is often necessary to make such stipulations in order to get needed information, as it was in this case when investigating the Bambrick case. No principle of public policy is violated in making such agreements, and "it would be extremely detrimental," says the court, "to the administration of justice if it should be established that a district attorney need not keep with an accused person such an agreement as made in this case, and that such a rule ought not to be established unless compelled."

PHYSICIANS AND SURGEONS.

People v. Hewson (N. Y.), 120 N. E. 115. *Practice under assumed name.*

The defendant is a licensed dentist. More than twelve years before this case, he had purchased the business of another dentist named King and continued the business until 1916 under the name "King Dental Offices." To comply with the statute against practicing under a false or assumed name, a change then became necessary. He then ran advertisements in which he repeatedly used his own name, but added the words, "formerly King Dental Offices."

Held: This did not amount to practicing under an assumed name. He cannot be held for connecting the present with the past. Chase, J., concurring in the result, makes, however, the following statement: "In the advertisement in question the defendant placed his 'trade name' in very large type at the bottom thereof, so as to appear on a casual observation as the signature and subscription thereto. When he used his real name therein, he placed it in small type. By such and other devices the advertisement is calculated to deceive the public. If an action had been brought against the defendant for the penalty provided by the statute, and at a trial the jury had found, on the evidence before us, that the defendant by the advertisement so suppressed his true name and emphasized his trade-name that the public were likely to be misled thereby, a judgment upon verdict should, I believe, be upheld. I have no doubt that as a matter of fact the defendant intended, by the advertisement and the devices contained therein, to avoid the real purpose of the statute and continue the practice of dentistry under the trade-name substantially as theretofore conducted by him. I concur in the decision about to be made solely because the purpose of the defendant cannot be determined as a matter of law."

VERDICT.

People v. Poole (Ill.), 119 N. E. 916. *Age of accused.*

It is provided in the Reformatory Act, 310, that in all criminal cases tried by a jury in which the defendant is found guilty, the jury must also find by the verdict whether or not the defendant was between the ages of 10 and 21 years, and if he is found to be between those ages then to find as nearly as possible his exact age. Held, that the age of an adult need not be shown and

unless there is evidence in the record tending to show that the defendant is under 21 years of age it is not necessary that the jury find the defendant's age in their verdict.

HOMICIDE.

Conspiracy to commit crime—liability.

When two or more, in furtherance of a common design, enter upon the perpetration of a burglary, armed and prepared to kill if opposed, and while so engaged are discovered, and in the effort to escape one of the burglars shoots and kills one who is trying to arrest him, all are held equally guilty of the homicide, in the Nebraska case of *Romero v. State*, 164 N. W. 554, annotated in L. R. A. 1918B, 70, although one of them, who is not armed with a deadly weapon, escapes before the shooting, and such killing is not part of the pre-arranged plan.

It is a general rule that persons joining in an unlawful enterprise, or counseling or inciting the perpetration of an unlawful act, will be presumed to intend the use of whatever means may appear to be necessary to overcome any resistance to the successful carrying out of such enterprise, and each member thereof is liable for acts done by other members of the conspiracy in the furtherance of the common object, and each is liable for all results which are the natural and probable consequence thereof. Their absence at the time of the commission of the act complained of does not relieve them of responsibility therefor.

Where several men combine to invade a man's household and they go there armed with deadly weapons for the purpose of assaulting him, and in furtherance of this design, while all the confederates are near at hand, one of them gets into a difficulty with the common adversary and kills him, it is held in *Williams v. State*, 81 Ala. 1, 60 Am. Rep. 133, 1 So. 179, 7 Am. Crim. Rep. 443, that all are guilty of the murder.

The members of a conspiracy to carry out a criminal enterprise are held responsible in *Holmes v. State*, 6 Okla. Crim. Rep. 541, 119 Pac. 430, 120 Pac. 300, for the acts of the different members thereof until the object is fully accomplished. This responsibility is not terminated by the accomplishment of the common design of the conspiracy, but it extends to and includes collateral acts incident to and growing out of the common design; as, for example, where the common design was to rob another and the parties agreed that after the robbery they would return to a certain place and divide the booty obtained, each of them is guilty of the murder of the victim by one of them while committing the robbery, even though the others were not present.—From JOSEPH MATTHEW SULLIVAN, Boston, Massachusetts.

APPEAL.

People v. Mooney, Calif. 174 Pac. 325. *Setting aside judgment for fraud.*

Motion to set aside judgment and sentence on ground that verdict, order denying new trial, judgment, and sentence were procured through the willful nonfeasance and malfeasance and willful fraud of the district attorney, committed upon the superior court, jury, and defendant, whereby defendant was deprived of a fair and impartial trial, and which prevented a fair submission of the cause, was too general as a charge of fraud.

A judgment in a criminal case cannot be set aside for fraud, because it is predicated upon perjured testimony, or because material evidence is concealed or suppressed.

The duty of a district attorney does not differ in the trial of criminal actions from that of counsel in civil actions, and if he introduces perjured testimony, or suppresses material evidence, the injured party is without remedy, in so far as the judgment is concerned.

Talkington v. State, Okla. 175 Pac. 132. *Effect of accepting parole.*

Where a plaintiff in error accepts a parole pending the determination of his appeal, he thereby waives the right to have his appeal determined; and, when the attention of the court shall be called judicially to the fact that a parole has been granted and accepted, the appeal will be dismissed.

ARMY AND NAVY.

State v. Burton, R. I. 103 Atl. 962. *Obedience to superior military authority as a defense.*

A member of the United States Naval Reserve force driving a motor vehicle along a city street in the performance of an urgent duty to deliver a dispatch under instructions from his superior officer, is not in time of war amenable to Pub. Laws, 1916, c. 1354, sec. 17, regulating speed of motor vehicles: state laws being subordinate to exigencies of military operations by the federal government in time of war.

(See Yale Law Journ., p. 61, for a criticism of the case.)

ASSAULT AND BATTERY.

People v. Bennett, Calif. 173 Pac. 1004. *Pointing an unloaded weapon.*

The pointing of an unloaded gun at the prosecuting witness, accompanied by a threat, without any attempt to use it otherwise, is not an "assault with a deadly weapon," and cannot sustain a conviction for assault, for want of a present ability to commit a violent injury on the person threatened in the manner attempted.

CONSTITUTIONAL LAW.

Wamsley v. People, Colo. 173 Pac. 425. *Ex post facto law.*

Laws, 1911, p. 527, making failure to support an illegitimate child a felony, is not unconstitutional as ex post facto, though applied to cases of failure to support illegitimate children who were begotten before the statute became effective.

EVIDENCE.

State v. McIver, N. Car. 96 S. E. 902. *Evidence of action of bloodhounds.*

In criminal prosecution, evidence of the action of bloodhounds in trailing guilty party held admissible where evidence showed hounds were registered thoroughbreds, experienced in trailing human beings, and that the hounds, after being put on the trail, ran down road into accused's house and up to overalls accused confessed to having worn on day of crime.

FALSE PRETENSES.

State v. Samaha, New Jersey 104 Atl. 305. *Effect of sale on Sunday.*

In prosecution for obtaining money by false pretenses, it is no defense that, as the pretenses as to value of a stone were made and acted upon, and the sale made on Sunday, title to the stone and to the money paid therefor did not pass, because the false pretense, and not the contract, is the basis of the prosecution, and actual ownership is immaterial.

INDICTMENT.

State v. Crouse, Me. 104 Atl. 525. *Statutory offense.*

Indictment for statutory offense in addition to statutory words of general description must, in some cases, set forth such further statement of facts and circumstances as may be essential to identify the particular doing.

Indictment for violation of Rev. St., c. 121, secs. 1-3, punishing willful and malicious burning of a "building" of another, reading that defendant feloniously, willfully, and maliciously did burn a "building," the property of another, etc., was insufficient to inform defendant of accusation against her, as required by Const., art. 1, sec. 6; "building" comprising any edifice erected by man of natural materials."

JURY.

Brown v. State, Okla. 174 Pac. 1102. *Time when juror must be qualified.*

Where the record shows that one of the persons selected by the jury commissioners from the tax rolls of the county for service in the district court was a minor at the time of his selection in January, 1917, but reached the age of 21 years and became a qualified elector of the county before the time he was impaneled and sworn to try the cause, *held*, that the mere fact that at the time of his selection he was not qualified for jury service did not operate to deprive the defendant of a fair and impartial jury to try said cause, or deny to him the right of trial by jury, as guaranteed by section 19, part 2, Constitution.

The provision in section 3690, Rev. Laws, 1910, that "no name of a person who does not possess the qualifications of an elector" shall be placed upon the jury list by the jury commissioners, is directory, and aimed to reduce to a minimum the likelihood of having served and summoned for jury service persons not qualified under the law. Where, by reason of inadvertence or mistake, the name of a person who is a taxpayer, but a minor, is selected and placed upon the jury list, the defendant may not raise the question that said juror was not lawfully selected for the first time after verdict has been rendered. Had said juror been a minor at the time the jury was impaneled and sworn to try the cause, a challenge for cause upon the grounds stated in the second subdivision of section 5857, Rev. Laws, 1910, should have been interposed as to him; otherwise, there is a lack of diligence to discover the disqualification.

LARCENY.

Calif. D. C. A. 174 Pac. 686. *Distinguished from embezzlement.*

Pen. Code, Sec. 508, providing that clerks, agents, or servants fraudulently appropriating property coming under their control or care by virtue of such

employment shall be guilty of embezzlement, does not apply to a mere caretaker, and his theft of the property is "larceny."

MANSLAUGHTER.

State v. Hopkins, S. Car. 96 S. E. 128. *Unlawful act: criminal carelessness.*

Where evidence tended to show that defendant carried a concealed weapon, which he handed to his co-defendant after removal of the magazine, and the co-defendant accidentally killed a boy with the cartridge in the barrel, the court is not justified in charging that the mere carrying of the weapon concealed was an unlawful act so as to make an unintended killing manslaughter aside from the question of criminal carelessness in failing to see that the gun was unloaded before handing it over for examination.

NON-SUPPORT OF CHILDREN.

State v. Byron. New Hamp. 104 Atl. 401. *Construction of statute requiring support of illegitimate children.*

The father of a bastard is not entitled to the custody or the services of the child, and is therefore not chargeable with his support, in the absence of statute or contract, giving the right or imposing the duty.

Where the father of a bastard child has not been ordered, in proceedings brought for that purpose, under Pub. St., 1901, c. 87, to pay for the support of the child he cannot be convicted, under Laws, 1913, c. 57, sec. 1, for willful neglect or refusal to support.

SELF-DEFENSE.

State v. Agnesi, New Jersey 104 Atl. 299.

Where accused, living apart from his wife and knowing that she and decedent were occupying the same apartment, bought a revolver and at 1 o'clock at night quietly entered the apartment through a window, which he pried open and roused deceased from sleep and shot him as he made a motion towards an axe, self-defense was not available to accused, since, under section 2 of the act concerning disorderly persons (2 Comp. St., 1910, p. 1927), he was such a person whom deceased had the right, under section 36 of the act (page 1937), to arrest without a warrant.

The rule is not that homicide is always reduced to "manslaughter" when a husband kills the paramour of his wife in the act of adultery, but only when the circumstances are such that the husband may be supposed to have acted in a sudden transport of passion, or heat of blood upon a reasonable provocation, and without malice.

SELF-DEFENSE.

State v. Jordan, S. Car. 96 S. E. 221. *Misleading instruction: duty to retreat.*

In a prosecution for assault with intent to kill, the instruction, on self-defense, that "if you are not on your own premises, and are assaulted . . . you must run, if by running you will not probably increase your danger," that "when a man is on his own premises he does not have to flee," but "may stand his ground," and that if defendants were on their land, they did not have

to run, was misleading, since the words "retreat" and "retreating" were those proper to be employed, not meaning the same as "run" and "running."

TERM OF IMPRISONMENT.

Ex Parte Tanner, Calif. 175 Pac. 81. *Confinement in another state.*

Where escaped prisoner of one state, upon completion of a term of imprisonment in another state for another crime, was held by authorities of latter state upon request of authorities of former state pending arrival of officers to take him back to former state, the 6 months and 18 days he was so held cannot be credited towards his uncompleted term.

TRIAL.

State v. Ybarra, N. Mex. 174 Pac. 212. *Effect of failing to permit accused to make statement before sentence imposed.*

In a capital case it is essential that defendant be asked by the court, before judgment is passed, whether he has anything to say why sentence of the court should not be pronounced upon him. And, where it does not affirmatively appear from the transcript of record that such inquiry was made of the defendant at the time of sentence, the judgment will be reversed; but a reversal on these grounds only affects the sentence and judgment and leaves the verdict and precedent proceedings in full force and effect.

NOTES AND ABSTRACTS

ANTHROPOLOGY—PSYCHOLOGY—LEGAL MEDICINE

Sterilization Studies of the Committee on Cacogenic Control.—At a meeting of the Council of the Eugenics Research Association on March 19, a vote was extended to the "Committee to Study and to Report on the Best Practical Means to Cut off the Defective Germ-Plasm of the American Population," which was formerly associated with the Eugenics Section of the American Breeders' Association, to assume the new title "Committee on Cacogenic Control," and as such to become affiliated with the Eugenics Research Association, the committee to remain under the chairmanship of Mr. Bleecker Van Wagenen. This invitation was duly accepted by the chairman, and the committee has again taken up its studies. At present it is engaged in collecting and analyzing data concerning the working out of the several eugenical sterilization laws including those enacted since the committee's last report in February, 1914.

The following is a complete roster of the state laws bearing upon eugenical sterilization:

1. Indiana, approved March 9, 1907.
2. Washington, approved March 22, 1909.
3. California, approved April 26, 1909.
4. Connecticut, approved August 12, 1909.
5. Nevada, approved March 17, 1911.
6. Iowa, approved April 10, 1911.
7. New Jersey, approved April 21, 1918.
8. New York, approved April 16, 1912.
9. North Dakota, approved March 13, 1918.
10. Michigan, approved April 1, 1913.
11. Iowa, approved April 19, 1913.
12. California, approved June 13, 1913.
13. Kansas, returned unsigned by Governor, March 14, 1913, and became a law without his signature.
14. Wisconsin, approved July 30, 1913.
15. Iowa, effective July 4, 1915.
16. Nebraska, effective without the Governor's signature, July 8, 1915.
17. Oregon, effective May 21, 1917.
18. Kansas, effective May 26, 1917.
19. South Dakota, effective July 1, 1917.
20. California, effective July 26, 1917.
21. California, effective July 31, 1917.

In Washington and Nevada the law is purely punitive, but being applied only to rapists is considered eugenical in its effect. In all the other states the law is either eugenical and therapeutic, or purely eugenical in its motives.

In the past, laws have been vetoed by the governors of Pennsylvania (1905), Oregon (1909), Vermont (1913) and Nebraska (1913).

In six states the statute has been before the courts. In Washington (1912) it was held constitutional. In Nevada the case is still pending. In New

Jersey (1913) it was declared to constitute "class legislation," by applying only to individuals within state institutions and not to the members of the same natural class in the population at large. In Iowa the Federal District Court (1914) declared the statute to constitute a "bill of attainder." Following this decision, Iowa repealed her (1913) law, and enacted a new one (1915) which applies only to Hospitals for the Insane, and which in each case requires the consent of the patient's family. The New York statute, which was copied after that of New Jersey, was held (1918) by the court to constitute "class legislation." In Michigan the court, following the decisions found in New Jersey and New York, declared (1918) the law to constitute "class legislation."

In reading the several decisions it is clear that if the statute provided for the sterilization of all persons within the state who present a certain constitutional condition it would be very apt to stand the scrutiny of the courts so far as "class legislation" is concerned, even though only a single type of degeneracy be subjected to the operation.

Iowa has enacted three laws on the subject. In Oregon the proposed legislation of 1909 was vetoed, but reached the statute books in 1913, was vetoed in 1913, but reenacted in the same year. Finally (1917) a new statute following quite closely the model law of the Committee on Cacogenic Control was enacted. In Nebraska the proposed law was vetoed in 1913, but reenacted in 1915. The California statute of 1909 applied to insane, feeble-minded, and criminal classes. The later statutes have confined the law to the insane and feeble-minded, and have extended it to new institutions for these classes.

As to the working out of these statutes, up to March 1, 1918, California had performed 1,077 operations; Connecticut, 12; Indiana, 118; Iowa, 67; Kansas, 3; Michigan, 0; Oregon, 17; Nebraska, 25; Nevada, 0; New Jersey, 0; New York, 9; North Dakota, 32; South Dakota, 0; Washington 1; Wisconsin, 61. Total, 1422.—From *Eugenical News*, May, 1918.

Wisconsin Eugenics Laws.—The "eugenic law relating to marriage" of Wisconsin was passed hurriedly in 1913, was so poorly worded as to lead to much discussion and thus resulted in wide education of the citizens regarding the nature and purpose of the law. In 1917 it was revised in the light of experience. Dr. M. F. Guyer, reviewing this legislation (*"Amer. Jour. Obstetrics,"* vol. 77, pp. 485-492), says that "there can be no doubt that, in general, public opinion in Wisconsin is strongly in favor" of the measure embodied in the law. The State Health Officer, "the one person who knows in greatest detail how that law is working out . . . feels very well satisfied with the measure and is convinced that it is accomplishing much good. It has already prevented the marriage of a considerable number of people infected with venereal disease in a communicable form. . . . Opposition has about disappeared" and only occasional applicants for a marriage license resent it." Even men from other states, contemplating marriage, have made application to the Wisconsin State Health Officer for examination." Undoubted education of the public in regard to the dangers to meet which the law was passed "is one of the chief benefits of the law." There is still considerable difference of opinion in regard to the value of the law requiring physicians to report all cases of venereal disease in the communicable stage treated by them.

Dr. Guyer then gives the text of the law authorizing the sterilization of criminals, insane, feeble-minded and epileptic individuals, which was passed

during 1913. "The State Board of Control is proceeding with great caution in exercising the authority granted it by the legislature in this statute. . . . The operation of vasectomy was performed upon twenty-two males during the months of July and August, 1915, and that of salpingectomy upon thirty-five females during the summer of 1916. Up to date about one hundred feeble-minded individuals have been so treated, of whom some sixty were women. All such patients have made speedy recovery and no bad physical effects have resulted. All are being kept under observation and reports are being made to the State Board of Control from time to time. No serious opposition to the operation for sterilization has been encountered. On the contrary, some of the more intelligent parents of the patients have favored it."—From *Eugenical News*, May, 1918.

Protecting You from the Criminal and Protecting the Criminal from Himself.—One of the strongest advocates of the plan to establish a Psychopathic Hospital in California is Chief of Police August Vollmer of Berkeley.

A bill will be introduced in the 1919 session of the California Legislature to provide a Psychopathic Hospital, and in support of this proposed legislation Chief Vollmer has written the following appeal:

It would be difficult to picture a more unjust method of dealing with our delinquents than the one now in vogue.

Gross injustice to prisoners is common, due to lack of understanding fundamental causes of prisoner misconduct.

All types are permitted to associate in our penal institutions, with disastrous results to both transgressors and society.

No thought is given to factors responsible for the individual's criminal act—whether caused by physical or mental disorder or committed by a victim of circumstances.

The real purpose of our criminal courts and entire penal system is to prevent crime; and yet how impossible the task unless we consider all the causes of crime.

Medicine now deals with the causes rather than the effects of diseases and plagues. To prevent malaria and yellow fever the breeding places of the mosquito are removed; typhoid danger is minimized by fly control and proper sanitation; rats are exterminated to destroy the fleas which in turn cause plagues; and fresh air, sunshine and wholesome food have reduced the death rate from white plague. That the principle involved should be applied to the prevention of crime can not be denied by any one who believes in crime prevention.

Careful study of small groups in this and other countries has resulted in such success that the need of universal study of delinquency and its causes is apparent.

Investigation of youthful "repeaters" in Chicago by Dr. William Healy proved that the factors responsible for delinquency are more numerous than we ever believed possible and to a large extent subject to control.

A thorough psychiatric, neurological, psychological, serological and medical examination supplemented by sociological investigation by field workers should be conducted in the case of every delinquent. With the results of these investigations before him every judge should be able to act intelligently and protect the rights of the individual and society as well.

All offenders do not commit crimes because of some inherent weakness or defect, but we are entitled to a reasonable suspicion that lack of inhibition may be due to mental or physical causes. All authorities agree that feeble-mindedness, epilepsy and mental diseases are crime factors, but they are not agreed as to the particular part each plays.

Morons provide one of the serious problems in handling criminal classes. Dr. H. H. Goddard estimates that 25 per cent of the criminal population are morons who because of mental weaknesses are not reformable and are a constant menace to society. Unable to hold positions they must steal or starve.

Investigations have shown that more than 50 per cent of the women detained for sexual offenses are feeble-minded.

Is it not better to determine by psychological examination which of our criminals are morons and cause them to be placed in institutions with their own kind for an indefinite period? Here they would be understood and only required to do what they were capable of understanding. These persons get along well when segregated under proper supervision and could be taught to do simple things at less cost to the State than if permitted to run at large. Permanent segregation lessens their opportunity to beget their kind.

One other group more difficult to recognize and handle is composed of psychopaths, who are individuals suffering from some form of mental disease. Their abnormal conduct is commonly defined by the layman as "Deliberate viciousness," but they are in fact in need of medical attention. Some respond rapidly to treatment. Others need prolonged attention and still others are incurable and should be confined in an institution.

Epilepsy contributes to delinquent tendencies. Murders accompanied by brutality or mutilation, sex offenses and violent assaults characterize the epileptics.

The public should not criticize too harshly the police, probation, penal and parole systems because of their failure to prevent crime, but there is no excuse for continuing our present methods of dealing with offenders in view of the information at hand.

Every effort should be made to classify the many types that are constantly filling our institutions, and treat them humanely and intelligently. Why send to prison men and women who are merely victims of atrocious environment, who need only a friendly hand and an opportunity to make good? Why confine for a definite period the person suffering from some mental or physical defect and then return him to society with the same criminal tendencies which caused him to commit his first crime? It would be just as sensible to sentence a tubercular patient to serve one week in a hospital. Why release from custody the delinquent who under no circumstances or in any kind of environment will be anything else but a criminal?

The need of a PSYCHOPATHIC HOSPITAL in every municipality with a population of 100,000 or more is apparent to all who have given the matter serious thought. The PSYCHOPATHIC HOSPITAL for smaller communities may be identified with the county hospital and should be affiliated with a medical school wherever one exists. If connected with the county hospital, it should be separate and apart from the wards, to prevent the contact of psychopathic patients with other patients.

What opportunity for an adequate estimate of an accused person is afforded a judge today? How much can he determine about a prisoner whom he has never seen and whose behavior in the few brief hours the justice does observe him in court will assuredly be artificial and assumed?

The *psychopathic hospital* would offer the judge in whose hands a man's life and liberty are to lie the opportunity of learning his physical and mental condition with the needed degree of accuracy. It could confer the same opportunity upon the probation and police officers and upon district attorneys. It would, in short, be one more aid towards a scientific, practicable and just disposition of the problems of crime and the criminal.—Issued by the Woman's Christian Temperance Union, San Francisco, Cal.

A Social and Psychiatric Survey of an Industrial Plant.—[The following is the report of a survey of an industrial plant made recently by Dr. Ball, a psychiatrist who for a number of years has practiced on the Pacific Coast. It has in it a great deal of merit from the viewpoint of those who are interested in improving the conditions of labor and the public health.—Ed.]

SUBJECT: Preliminary report on observations made during a two-day survey of an industrial plant in California.

Sources of Information: Direct observation, interviews with heads of departments, and with employees.

DIAGNOSIS: Output lowered and produced at excessive cost (i. e., greater and better output could be attained at cost of present output if present abnormal conditions are corrected).

CAUSATIVE FACTORS: A—*Labor Inefficiency*, due to

1. Physical defects.
2. Nervous defects.
3. Mental defects { Pathological.
Psychological.
4. Character defects.
5. Peculiar traits.
6. Vocational misfits.
7. Racial peculiarities.
8. Unhygienic working conditions.

B—*Time Loss*, due to

1. Loafing on the job.
2. Visiting.
3. Making material for own use.
4. Improper communication facilities.
5. Present method of issuing supplies.
6. Present method of distributing labor.

C—*Social Factors:*

1. Defective employment methods:
 - (a) Improper facilities for receiving applicants.
 - (b) Unsatisfactory application blank.
 - (c) No provision for human salvage.
 - (d) No provision for medico-psychological examinations.

2. *Mismanagement:*

- (a) Lack of foremanship { Unskilled.
Temperamentally unfit.
Pathologically unfit.
Brutal, selfish.
Favoritism.
- (b) Lack of harmony and co-operation between departments.
- (c) Too wide breach between employer and employee.

3. *Insufficient Social Service:*

- (a) No provision for eating.
- (b) Improper recreation facilities.
- (c) No education { Department schools.
Movies.
Special lectures.
- (d) Medical supervision. (Poor.)
- (e) Inadequate accident prevention.
- (f) Inadequate provision for physical culture, rest, and baths.
- (g) No woman supervisor.

PROGNOSIS: Good, providing proper treatment be applied and continued unhesitatingly, and with deliberate and rational vision.

The Americanization of labor by normal and unselfish leaders of industry. (Labor, as a class, has in the past borne the burden of assimilation of the enormous influx of immigrants of many nationalities, races, and languages.)

The leaders of industry have kept aloof, and the breach between capital and labor has gradually widened until present conditions have awakened the true American to the seriousness of the situation.

SUMMARY: Under this heading are enumerated briefly the observations made during the two-day survey of your plant from a sociological, medico-psychological, and economic standpoint. It is manifestly impossible in such a brief time to make an analysis of individual departments, but it is possible to get a good perspective from such a "spotting" survey.

At once one is impressed by the poor, inadequate and unhygienic method of receiving the labor. Instead of creating and stimulating good-fellowship, interest and loyalty, as well as esprit de corps, the present method is conducive to antagonism, disgruntledness, disloyalty, disinterestedness, and at the same time, is a potential factor in lowering the vital resistance of the individual, and consequently his worth to the employer.

Unnecessary crowding, unnecessary unhygienic conditions, few protective devices, no accommodations for eating, little or no recreation stimuli, absence of educational lectures and movies, utter disregard of welfare of women employees, *unscientific selection and wasteful distribution* of labor; mismanagement as exemplified in poor or inefficient foremanship, inharmoný, little or no co-operation between departments, favoritism, no systematic or organized attempt at salvage of terminating efficiency; time loss as demonstrated by men loafing on the jobs, visiting, smoking, too many men for the job, absence of system of communication, the employment of men and women unsuited for the various tasks assigned to them on account of various physical, nervous, and mental defects, the placing of "square pegs in round holes," no study of racial peculiarities, character defects, or peculiar traits, as regards an individual's fitness for

his job, no encouragement of special abilities, and utter ignoring of disabilities, *are the important points noted.*

In fact the spirit of production has become the obsession, without making proper selection of the individual who does the producing.

The most encouraging observation was the fact that a number of men in charge of various departments, especially the gentlemen in the *Service and Employment* departments, are especially alive to the situation and the demands of the present age, and are keenly interested in the *individual* and realize the potentialities for good within the grasp of the present generation. Their vision is clear and not befogged by hazy ethereal theories, but enhanced by definite cold-blooded facts, open to all who can see.

TREATMENT: Prophylactic measures started now will prevent the disease of inefficiency from making further inroads on the constitution of capital and labor, and will stabilize and unify both. It is less than a hundred years since organized labor was born, but it has suffered much during that time, at times ill unto death, ridden with parasites, bearing the brunt of adjustments to meet ever-changing conditions.

A new epoch is at hand, unfolded by the present great necessity, associated with abnormal conditions, and surrounded by unusual circumstances.

The only treatment is purging the situation of the *causative* factors. Give it a dose of efficiency, and gradually build up the constitution of labor, and at the same time stimulate closer relation between employer and employe.

Stabilize your industry by the application of scientific and practical selection of the human material at hand. Stabilize the individual by being interested in him. Create trust, confidence, and co-operation. Drive home the principles of good-fellowship.

All the above must be done through the employment bureau, which must be an efficiency bureau in every sense of the word.

It is absolutely necessary to study the *individual* as regards his physical, nervous, and mental fitness for a particular job, and to ascertain his special abilities and disabilities.

CONCLUSIONS: The co-ordination of all scientific aids under one competent directing head, and the sympathetic and untiring co-operation of the heads of all departments and especially the management, is essential for the success of this plan.

It is practical, broad, comprehensive, humane, economic.

RECOMMENDATIONS: The establishment of such a bureau with sufficient power to operate unhampered.—J. D. Ball, Berkeley, Cal.

Will Be Crime Expert.—Investigation of circumstances surrounding future mysterious murders and suicides will be handled strictly on a scientific basis, according to a special order issued yesterday by Marshal Carter and transmitted to the district police captains. Dr. John Rathbone Oliver, who was appointed psychiatrist to the criminal courts of this city several months ago, will in the future lend his scientific knowledge to the end of crime solution.

Dr. Oliver for several years was attached to the staff of the Henry Phipps Psychiatric Clinic of the Johns Hopkins Hospital. He is now a visiting physician at the clinic and devotes much of his time to work in the courts. Balti-

more is now in a class with Chicago and New York in the matter of scientific aid in crime mystery.

Marshal Carter, in his order to the district captains, instructed "that in the future all sudden deaths of mysterious circumstances must be reported to Dr. John B. Oliver." For a number of years he has been deeply interested in the physiology of crime.

He will be a material aid to the officers of the state's attorney's staff and to Headquarters Detective Joseph Dougherty, chief of the homicide division of the Detective Bureau, especially in the matter of motive. Dr. Oliver, it is understood, will be assigned to attend important autopsies.

Dr. Oliver has written extensively on the psychiatry of crime. He spent a number of years in Europe, and at the outbreak of the European war he was in Austria, where he served in Red Cross work for several months.—Baltimore "Sun," November 25, 1918.

COURTS—LAWS

Summary of the State Laws Relating to Social Welfare.—Mr. Elmer Scott, executive secretary of the Civic Federation of Dallas, Texas, has compiled a summary of state laws relating largely to centralized state authority or supervision over public and private benevolent, penal, and correctional institutions. The compilation has been made for the State Commission on Charities and Corrections Legislation adopted by Governor Hobby at the instance of the Texas Conference of Social Welfare. Copies of the report may be had for one dollar addressed to the Texas Conference of Social Welfare, 1306½ Commerce street, Dallas, Texas. The purpose of the pamphlet is to serve as a guide to the commission in the preparation of legislation. It will serve legislators also, and the general public as a compendium of accurate knowledge as to what constitutes the best legislative vision of the United States. It is not an argument for any form or function of board or commission. It is simply a compilation of how other states have expressed their humanitarian and correctional vision.—R. H. G.

Compulsory Health Insurance.—Dr. Edward H. Ochsner of Chicago, in an article in the *Illinois Medical Journal* for November, 1918, under the title "Further Objections to Compulsory Health Insurance" concludes as follows: "I firmly believe that to establish compulsory health insurance would be one of the most serious mistakes that any commonwealth could possibly make, because it would be bound to lower the quality of medical services rendered to its citizens, it would increase loss of working time from sickness, it would throw an enormous financial burden upon the taxpayer, the employer and the employe, it would greatly reduce the incentive to thrift and industry and put a premium on deception, sloth and shiftlessness, and compel the industrious, hard-working, clean-living workman to pay tribute to the untruthful, lazy, shiftless, and immoral, and finally, it would have a tendency to take from independence and self-reliance its proper pride and from dependency its salutary shame."—R. H. G.

Some Laws Which, If More Generally Known and Enforced, Would Decrease Juvenile Delinquency in Chicago.—

Purchasing of Junk from Minors. It shall be unlawful for any junk dealer, pawn broker or any second-hand dealer, either directly or indirectly, to purchase or receive by way of barter or exchange or otherwise anything of value, or to receive on deposit, or pledge anything of value as security for a loan of money from any person, either male or female, under the age of the legal majority respectively. Penalty: fine not to exceed \$500 for each offense. (Revised Statutes, ch. 38, sec. 42 h. c.)

Smoking of Cigarettes by Minors. It is unlawful for persons between the ages of 7 and 18 years to smoke cigarettes in any public street, alley, park or other lands used for public purposes, or in any public place of business or amusement. Penalty: fine of not more than \$10.00 for each offense. (R. S., ch. 38, sec. 272i.)

Sale of Cigarettes to Minors. No person or corporation shall sell or give away or offer for sale or give away any cigarettes or cigarette papers or cigarette wrappers of any kind to any person under 21 years of age. Penalty: fine \$25 to \$100. (Council Proc. 1913, p. 2748.)

It is unlawful for any person to furnish cigarettes in any form to any person between the ages of 7 and 18 years, or to permit any such person to frequent his premises for the purpose of smoking cigarettes. Penalty: fine first offense not to exceed \$50; additional offenses not to exceed \$100, or imprisonment not exceeding 30 days. (R. S., ch. 38, sec. 272k.)

Sale of Tobacco to Minors. It is unlawful to sell or furnish tobacco in any form to minors under sixteen years of age, except upon the written order of the parent or guardian. Penalty: fine \$10 to \$100. (Council Proc., sec. 734.)

Sale of Cigarettes and Tobacco Prohibited Near Schoolhouses. Cigarettes, tobacco or tobacco products in any form shall not be sold or given away at any school house. Penalty: fine \$25 to \$100. (City Code, sec. 733.)

Billiards and Pool Halls—Minors Not Permitted in. No person who keeps, conducts or operates any billiard or pool table for profit or who conducts or operates any room wherein is kept or operated for profit any billiard or pool table shall permit or allow any minor under 18 years of age to play thereon or to be or remain in such premises. Penalty: fine \$10 to \$50. Any such minor found playing on any such billiard or pool table or found in any such pool or billiard room shall be fined not less than \$5.00 or more than \$50.00. (City Code, sec. 170.)

Sale of Deadly Weapons and Toy Guns to Minors. No person shall sell, give, loan, hire, or furnish to any minor within the city any firearm or any toy gun in which any explosive substance can be used, or any bowie knife, or any deadly weapon of a like character, or any air gun, air rifle, or any other gun or toy in the nature of any weapon. Penalty: from \$10 to \$100 fine. (Council Proc., 1915, p. 2692.)

Carrying of Deadly Weapons. Carrying deadly weapons concealed about the person is prohibited. Such weapons may be confiscated and the person carrying the same arrested without warrant and fined from \$25 to \$200. (C. C., sec. 2807 et seq.)

Sale of Liquor to Minors. No person owning or operating a place where intoxicating liquors are sold or given away shall permit any minor to drink

therein intoxicating liquors of any kind, or to play therein with dice, dominoes, cards, balls or any other articles used in gaming, nor shall any person owning or operating such place sell or give away or deliver to any minor any intoxicating liquors either to be drunk on the premises or to be carried away. Penalty: fine \$20 to \$100. (C. C., sec. 1543.)

Sale of Certain Publications to Minors Prohibited. It shall be unlawful for any person to sell, lend, give away, etc., to any minor child literature of any sort devoted to the publication of criminal news, police reports, accounts of criminal deeds, pictures and stories of deeds of bloodshed, lust, or crime. It shall be unlawful to exhibit in the view of any minor child any paper or publication mentioned in the above. It shall be unlawful to hire, use or employ any minor child to sell or give away any paper or literature described above. It is also unlawful for one having the custody of a minor child to permit such child to sell or in any manner distribute such literature described as above. Penalty: fine not to exceed \$500 or imprisonment not to exceed six months, or both. (R. S., ch. 38, sec. 42he.)

Dance Halls—Minors Not Permitted in. It is unlawful for any person, firm or corporation as owner, agent, lessee or otherwise that maintains or conducts any public dance hall where intoxicating beverages or liquors are sold or given away, or any such dance hall adjacent to or connected with any room, building, park or enclosure of any kind where intoxicating beverages or liquors are sold or given away to permit any minor to enter and be and remain in any such public dance hall, or be and remain upon the premises where such public dance hall is located unless such minor is accompanied by his or her parents or parent. Fine \$25 to \$200 for each offense. Any person falsely representing himself or herself as parent of any minor shall be guilty of a misdemeanor and fined from \$25 to \$200 for each offense. (R. S., ch. 43, sec. 48.)

Children Peddling and Begging on the Streets. No child under any circumstances is allowed to beg. No girl under 18 is allowed to sell or distribute anything whatever in the streets or public places of Chicago. No child under 10 is allowed to sell or distribute anything whatever in the streets or public places of Chicago, or accompany anyone so doing. This means babies in arms also. No boy under 14 is allowed to do any of these things after 8 p. m. No boy under 14 is allowed to do any of these things before 5 a. m. (City Council Proc., 1912, p. 1175.) (Juv. Ct. Law, sec. 169.)

Children Not Permitted to Solicit Funds. It is unlawful for any person, acting for himself or as the officer of any association, society or institution, to employ or use or to permit the employment or use of any girl under age of 18 years or any boy under the age of 17 years for the purpose of soliciting money upon the streets or public places within the city, whether such solicitation is for charitable purposes or any other purpose, or whether such solicitation is conducted on a day set apart as a so-called tag day or otherwise. Penalty: fine \$5.00 to \$100. Passed by City Council December 3, 1917. (Council Proc., page 1606.)

Compulsory Attendance at School. Every person having control of a child between 7 and 16 years of age shall annually cause him to attend some public or private school for the entire time during which the school is in session, which shall be not less than six months of actual teaching; provided this act shall not apply where the child is being instructed for a like period of time in the elementary branches by a competent person, or where the child's physical

or mental condition renders the child's attendance impracticable or inexpedient, or where the child is excused for temporary absence for cause by the principal or teacher, or where the child is between the age of 14 and 16 years and is *necessarily and lawfully employed during the school hours*. For the neglect of this duty, the person offending shall forfeit for the use of the public schools from five to twenty dollars and costs of suit and shall stand committed until the fine and costs are paid. The Board of Education or the Board of School Directors shall appoint truant officers who shall report all violations of the preceding section and prosecute all persons who appear to be guilty of such violations. The officer shall arrest any child of school age that habitually haunts public places and has no lawful occupation, and also any truant child, who absents himself from school, and shall place him in charge of the teacher. Any person having control of a child who with intent to evade this law makes a false statement as to the age or employment of the child or the time he is attending school shall forfeit from three to twenty dollars for the use of the schools. (R. S., ch. 122, sec. 274.)

New Illinois Child Labor Law. No child under 16 shall work over eight hours a day, or six days a week, or before 7 a. m. or after 6 p. m.. Employment certificates shall be issued only to children between 14 and 16 years old who have finished fifth grade and who have employer's written promise of work. They must also have certificate of medical examination showing them physically fit to do the work promised them. They must also have proof that they are 14 years old. Proof of age required is one of the following, preference being given in the order named: Birth certificate, baptismal certificate, passport, certificate of arrival in the United States, bona fide bible record of age, confirmation certificate or life insurance policy at least one year old, school record of age during two years' attendance or statement of two doctors—one of them a public health officer—that the child on examination appears to be at least 14 years old. The employment certificate does not belong to the child, but is sent to the prospective employer and must be returned by him to the issuing office when the child leaves work. The child must find new work and apply for a new certificate, or return to school. No girl under 16 years old is allowed to do work which causes her to stand constantly. (Approved by State Legislature June 26, 1917, and in force July 1, 1917.)

Federal Child Labor Law. The demands of the Illinois Child Labor Law cover those of the Federal Law, except that old certificates presented before July 1, 1917, are accepted under the State Law and are not accepted under the Federal Law, which requires new certificates issued since July 1, 1917.—Compiled by Arthur A. Guild for the Boys' Workers' Association of Chicago.

Causes of Domestic Troubles in Chicago.—Shirking of responsibility and living upon too high a scale are the main reasons for the increasing cases of domestic trouble. While I sat in the Court of Domestic Relations out of the 3,687 cases 1,017 cases were brought in by women who had no children, 1,093 by women with one child, 819 cases by women with two children and the remainder by women with three or more children.

Much to my regret I do not have statistics to show the average age of those who came before the court, but that to the best of my recollection the average age of the boys was 20 years and that of the girls 18 years; neither do I have any statistics to show how long on the average the couples had

been married, but as far as I remember fully 60 per cent of the couples had been married two years or less.

I feel convinced that the lack of preparation of the young people for the marriage stage by allowing them to be extravagant, to spend all their earnings on clothing and pleasure instead of saving up for the foundation of a home and a brighter future is a serious menace to domestic happiness and accounts for the fact that so many young people after they marry live with the man's or wife's parents or in furnished rooms, a life of which most of them tire very soon. I further place blame on those merchants who encourage extravagance by inviting them to buy on the installment plan, because frequently people buy on "easy terms" three times as much furniture as is needed, or they are able to afford, spending four times as much money and binding themselves to larger monthly payments than their circumstances justify. And if these people can in addition go out and obtain food and other necessities of life on credit instead of being obliged to pay for them in cash, then they will quite naturally indulge and live high.

I further emphasize the success of adult probation. In one year 758 persons were placed under probation and that of this number 185 were probation repeaters, 273 former House of Correction inmates and 428 House of Correction repeaters, leaving 258 individuals who previously had neither been in the House of Correction nor had they been in the Court of Domestic Relations. Of these 758 offenders 434 lived at home during the period of probation, of 251 who did not live at home a number had joined the Army or Navy and 73 disappeared.

The success of our probation system is enlarged upon in my special report to Chief Justice Olson on my experience in the Court of Domestic Relations of the Municipal Court of Chicago.—John Stelk, Municipal Court, Chicago.

PAROLE—PROBATION

Current Tendencies in Adult Probation.—For the past decade the probation officers of the country have been making a pilgrimage once a year to this conference of the National Probation Association, to compare notes, to clarify their minds and to measure values and results. It would appear, therefore, that at this, our tenth annual meeting, we might with profit pause a moment to take stock, and turn an introspective eye upon *ourselves, our work and the probation service.*

Social service is one of the finest developments of the twentieth century. The nineteenth century saw the inception and birth of this vast movement for the improvement of society. The attitude of people towards their fellow-beings has been changed exceedingly in the past century. At the beginning of the nineteenth century, the insane, the feeble-minded and the epileptic, for the most part, were treated as criminals and cruelly punished, and very little family relief work of a scientific character prevailed. People were allowed to go hungry and cold, infants allowed to die, the aged were not cared for, and all the misfits of society were treated with cruelty and contempt. Criminals were punished in the most horrible manner for very slight offenses.

A survey of the situation at the present time, in the second decade of the twentieth century, reveals a remarkable transformation. Family relief work has become an indispensable function of the municipal government. The

state now takes care of its blind, its deaf, its insane, its feeble-minded and epileptic. Penology emphasizes not so much punishment for punishment's sake, as the reformatory and educative effects of prison sentence. Foundlings, orphans, and the aged, in fact all types of dependents, are now more than ever being treated humanely and skillfully.

The great industrial establishments of the country are introducing social welfare work in their factories, as an investment in human efficiency. It is not a namby-pamby experiment in emotional expression, but a hard-headed business proposition which pays returns in dollars and cents.

It is only during the past few decades that *probation* has been born and has stepped into the courts of our country to humanize harsh and rigorous legal procedure, and to act as the gloved hand of the law. It has been demonstrated, beyond the shadow of a doubt, that probation, entirely aside from its saving of the human and spiritual resources of the community, is a paying investment in terms of dollars and cents. We now all know that it is cheaper to pay probation officers to supervise probationers, than it is for the state to construct and maintain extensive penal institutions.

Probation Requires Testing

Probation has been accepted by the community, and no longer do workers in this field have to fight to retain its standing in the eyes of the law. The community in general has adopted us as a legitimate part in the scheme of social machinery. Our present task, therefore, is that of justifying our continuance in the eyes of the community. When probation was in its infancy, much could be forgiven it, but now that probation has passed into maturity, the community will survey it with a much more critical eye, will place greater demands upon it and will expect definite and permanent results. Our next step, therefore, to facilitate the production of the expected results, is to formulate and work out a definite body of knowledge and a scheme of procedure. Mr. Arthur W. Towne, former secretary of the New York State Probation Commission, has aptly summarized the situation: "The development of probation has reached the state where extension is not as important as is a critical study of the system and refinement of its methods, and the willingness to allow experimentation in certain features of its administration."

Moreover, the sheer volume of work gives us pause. The number of juvenile and adult persons released by our courts during 1917 in New York state, was greater than ever before, totaling 22,518 persons. We must recognize, therefore, that with over twenty-two regiments of juvenile delinquents and adult offenders placed on probation in a single year, the probation system in New York state, taking it as an example, has assumed immense proportions and demands careful, intelligent study and administration.

Probation, in order to reach its highest development and in order to perfect a methodology of its own similar to that of other professions, must sharply define its wants, its problems, and its methods of procedure. The medical profession, for example, as an organized body, fixes its rates of compensation, formulates its own code of ethics in accordance with objective morality, determines in the main the body of its knowledge, criticizing and refining it constantly, and develops its technique. Similarly, probation must work for an improvement of the conditions under which it must labor, and, by means of experiment, analysis and careful planning, must work out a

methodology or technique of procedure. In the present discussion let us consider, therefore, in the main:

First: the fundamental working conditions necessary for effective probation work.

Second: the problems of formulating and improving the methodology; that is to say, the technique of the probation method.

Fundamental Working Conditions

Let us first consider the problem of the improvement of the probation officers' working conditions. In order that a probation officer may have the opportunity of accomplishing any adequate results, he must not be overburdened with work. No probation officer can properly supervise, for example, two or three hundred cases at one time. Every possible attempt should be made to reduce the quota per officer to fifty probationers under supervision at one time. Again, probation officers should work for an increase of compensation until the proper standards of salaries are obtained, whereby men of the right type of mind and ability will be attracted to the profession and retained in the service.

Furthermore, probation officers should see to it that they are not overburdened by clerical work. An adequate clerical staff must be provided so that time is available for the essential field duties of the probation officer. No probation officer should be compelled to make his preliminary investigation reports in long hand, or do all of his case history work, correspondence and reports in long hand. A sufficient number of typists, record clerks and dictaphones should be provided for these purposes.

Most important of all is the kind of material that the probation officer is given to work upon. Probation officers cannot accomplish the impossible. They must not be given confirmed alcoholics, habitual criminals, hardened prostitutes, feeble-minded or defective persons, as material to improve and transform into normal, happy human beings. The source of the supply of material must be protected and judges must be led to recognize the importance of the right choice in the kind of persons to be placed on probation.

Let me emphasize again that an improvement of the conditions under which we work is as essential to the highest development of probation, as is the improvement of the methods of the actual, practical details of our work. Hand in hand with our refinement, for example, of the methods of conducting preliminary investigations must go our fight for a reasonable amount of work, adequate compensation, adequate clerical help, and the proper human material to work upon. Assuming that we are agreed as to the necessity of obtaining the proper conditions under which to work, let us now consider how we can develop a methodology to improve the quality and test the results of our work.

As you all know, preliminary investigations of offenders are absolutely essential to any constructive probation work. It must not be forgotten, however, that preliminary investigation work is only the first step in the process. It occupies the same place in probation as diagnosis does in medicine. It opens up, analyzes the problem, and puts its finger on the specific diseased part. As in medicine, very little practical good would result if the physician spent the greater part of his time in the diagnosis of a large number of persons and made but little effort to treat them. So in probation, only a slight advance will be made if probation officers spend practically all of their time conducting

investigations, and make but little effort to help the offenders placed in their care.

As a means of preventing the work of investigations from interfering unduly with the proper carrying on of the probation work, we are going to try out the interesting experiment in the Magistrates' Courts of New York City, of dividing our probation staff into a corps of investigators and a corps of supervising officers. We hope, through this specialization, materially to improve our work and to render more constructive supervisory care to the large number of delinquents in our charge.

As a general proposition, therefore, we should urge the exercise of care on the part of justices and magistrates throughout the country, lest the making of preliminary investigations require so much of the time of the probation officers as to prevent them from properly performing their principal duty of looking after and aiding persons who are placed on probation.

II. *Improving the Technique*

One of the current developments in our probation work is the realization that there is a definite methodology in the making of a comprehensive diagnosis of a delinquent. Miss Mary E. Richmond's book, *Social Diagnosis*, which, by the way, should be in the hands of every probation officer, is a very definite step in the development of social case technique. We have passed the day in probation work when perfunctory and superficial investigation and supervision of a defendant will suffice. We must go to the root of the trouble and get accurate information as to the structure and functioning of the human mechanism we are trying to repair and rehabilitate. How can we expect to modify temperament and character if we are ignorant or indifferent in regard to the nature of the biological, moral, and social forces regulating temperament and character?

In order to accomplish our purpose it is obvious that we must study intensively the lives of the human beings in our care. We must train ourselves to become capable of observing the causes and effects of human conduct, and of recording the manner in which probationers respond to various methods of treatment and of discovering definitely the causes of our failures and successes. We must correlate the results of our experience and discover principles which will serve as compass and chart for future navigation. Diagnosis is the hardest part of medicine, but very often the correct diagnosis of a given problem suggests the proper treatment.

That many delinquents are defective mentally and physically, and that this is a contributing, if not the principal cause of their offenses, is a matter of every-day observation in our courts. Not only should the facts of feeble-mindedness, dementia praecox, and other abnormal mental conditions be determined, but the presence of tuberculosis, venereal and other diseases, the effects of alcoholism and other excesses, and the degree of mental and moral responsibility should be, if possible, ascertained. The trained psychologist working in our courts can be of the greatest assistance to the probation officer in his efforts to cope with the problems of the delinquent.

The idea of clearing houses as aids to court work, probation and parole, as a necessary part of the machinery of justice, is an important current tendency in probation work. On May 1, 1918, the state of Ohio established its new Bureau of Juvenile Research. Under the juvenile research law, all

wayward and defective youths are to be committed by the courts to the Ohio Board of Administration, instead of directly to the various institutions. After mental and physical examination and social investigation, the bureau will decide whether the children are normal or defective. Defectives will remain in the custody of the state and will be assigned to the proper institutions for treatment. Normal, but delinquent children, whenever possible, will be paroled. Along these lines we have the current administrative problems in our large cities of the possible correlation of probation and parole, and the possible consolidation of the probation systems of the various courts under a commissioner or commission, for consideration and decision.

It has been said of the great Napoleon that he once declared that the best thing he ever did was to decide that he no longer would see things as he wanted to see them but as they really existed. If we would take that position and determine to look at things as they are, could we not make great improvements in our work? One of the commonest weaknesses in probation work is that many probation officers have more work than they can do well, with the result that they can make but little effort to better the conditions of probationers or improve their associations and habits. They have little opportunity to do other than have the probationers report to them in a perfunctory manner each week or at longer intervals. Such reports, if made personally, may occupy often only a moment or so; sometimes they are made by mail. Should we not protest vigorously against such conditions and make a determined fight for relief before the proper authorities? Should we not be alive to the danger of our work becoming mechanical and devoid of human warmth and sympathy? If a minute analysis of our work were conducted, in how many cases would it be found that we made an intensive study of each probationer and that under the circumstances we did the best we could for all those who were under our care? These are important and pertinent questions, and must be answered in the light of the facts.

Of course, you are all aware of the various influences that can be brought to bear upon the probationer to effect his reformation. For example, the probation officer should make an adequate number of home visits so as to acquaint himself intimately with the probationer's environment and associates. Religious influences, proper recreation, and remunerative employment should be provided. We must realize that no two persons are alike, and even though they have committed the same sort of offense, it does not follow that they can be reached in the same way. Case conferences should be held frequently to consider special problems and peculiar and difficult cases.

Some years ago a very wise probation officer remarked: "The most effective probation work that I have ever come in contact with is the result of tying up the probationer to the constructive forces of the community. If you fill his life full of constructive things he will neither have time nor opportunity for the destructive." This was another way of saying that he recognized the values of co-operation. Hans Gross tells us that only the sham knows everything; the trained man understands how comparatively little the mind of any individual can grasp and how many must co-operate in order to explain the very simplest things. The successful probation officer recognizes his limitations. He realizes that he cannot do everything. It is his bounden duty to keep in such close touch with the social agencies of the community that by simply stepping to the telephone he can command immediately their best

resources and co-operation. The past ten years have taught us the necessity of getting together all the forces of the community to aid in the solution of probation problems.

Statistics and Publicity.

One of the great problems of the probation officer is the checking up of violations of probation conditions. Courts and probation officers have no greater responsibility than to keep the probation system from becoming regarded by offenders and the general public as a system of sentimental leniency—of simply letting offenders off without punishment. Probation is intended to give the delinquent not only another chance, but also real oversight, practical assistance, and the assurance that in case of continued misconduct he will be returned to court and be more severely dealt with. Probation fails of its purpose unless it is very definitely and concretely a helpful disciplinary and reformatory agency.

An interesting experiment is about to be set on foot in the City Magistrates' Courts of New York City, namely, that of a probation part, or court. This court will be presided over by a special judge, who will devote ample time to the consideration of probation problems. He will review periodically the progress of probationers, will reprimand or sentence all violators of probationary conditions, and will discharge in an impressive manner probationers whose periods of probation have terminated.

Adequate probation forms and proper records, and an accurate system of reports and supervision should be an essential part of the probation system. Probation has reached the stage of development when it should commence to check up scientifically the results of its efforts. A great deal of time and effort should be spent on the checking up of persons released from probation. From the successes or failures, in the long run, we determine the relative value of certain types of activities of our work as compared to others, and if results are favorable we can take increased confidence in our work. Such a study was made in Buffalo, N. Y., in 1915, with interesting and enlightening results. Of this study Mr. Homer Folks said: "This study has given me a greater degree of security, confidence and satisfaction in the ultimate results of our probation work in serious cases, than any other examination that has so far been made."

Publicity is a duty incumbent upon us and not an optional act. Publicity is a recognition by the probation officer of his stewardship to the public. By publicity we mean the kind of publicity that explains, that stimulates, that clarifies, that fights, that defends, that gives the public the knowledge it has a right to ask. How can this be done? In many ways. Let us make our annual reports not only accurate, but interesting. Let us make our literature attractive and educational. Let us accept such opportunities as come to us naturally to appear before the public and speak of our work. Let us discover what is valuable to a newspaper, and reveal to it the so-called human interest side of our profession. We must publish facts and findings and must constitute ourselves guides of the public, or we shall often find ourselves in the embarrassing situation of being compelled to defend certain fundamental principles of our work which have seemed to us personally so axiomatic as to require not even an exposition.

In the ultimate analysis, however, the value of probation to the individual probationer is due only slightly to the methods or the machinery used. Funda-

mentally, its value depends largely upon what the individual probation officer does for the particular persons entrusted to his care. No system without constructive, discriminating, individual work can operate well. The great surgeon is the man who has devoted himself earnestly to his profession and has brought to it right altruism, high intelligence, earnest zeal, and all the powers of his personality. Probation is a difficult profession, demanding skillful service. Entrusted to the man or woman who merely looks upon it as a political job, probation is doomed to failure. No matter how swift and powerful an aeroplane may be, it will never give maximum service to an army unless directed by the skillful hand of a trained airman.

Should we not, therefore, approach our task with great humility, with a proper respect for its difficulties and with a true appreciation of its opportunities? Should we not by training, reading, and conference, endeavor to acquire all of the knowledge which will help us to do our work more effectively? Should we not endeavor to learn from all agencies and individuals the truths which they have discovered in their respective field and which we can utilize in our own? Should we not give a careful study to the relative merits of different methods of applying probation, and improve our case treatment in the light of such study? Should we not approach every individual probationer with a conscientious determination to give him the best service of which we are capable, realizing that his future is largely in our hands?

A broad vista of opportunity stretches before us. The probation officer is primarily a builder of human character, a force for the betterment of social life. As yet the community is not fully alive to our work nor does it realize clearly just what the probation officers are attempting to accomplish in their daily work. The day of this realization, however, is approaching us swiftly, and with it will come progressive rewards and recognition of the dignity of our public service. Those who have visited the battle fronts of the Great War have come back impressed with the wonderful efficiency which our forces are showing in the struggle. More impressive, however, than the machinery which has been put into action are the splendid human qualities of loyalty, co-operation, precision, orderliness, self-sacrifice, and spiritual devotedness evinced by the officers and men—the same qualities which you and I know to be essential to effective probation work.

As we do our work from day to day and make tests of our individual output, let us make sure that back of our efforts are the courage and loyalty and conception of the greatness of the task which alone can produce the highest efficiency. Let us respect the great constructive work in which we are engaged. Let us always remember that its code of ethics is based upon the true service that we owe and wish to give humanity. A wise philosopher once said that the only wealth is life. In our fallible human way we are trying to give a more abundant life to those unfortunates of society who come under our care.—E. J. Cooley, Chief Probation Officer, New York City, in Proceedings of National Conference of Social Work, 1918.

Annual Report of Chief Probation Officer of Cook Co., Ill., to the Judges of the Circuit, Superior and Municipal Courts.—The sixth year of adult probation in Illinois has found this department in better shape than ever before. The office is better organized; the officers better fitted because

of experience for the work they have to do; and the people have more confidence in the system.

Conservative management with close attention to details has made the department very efficient in dealing with both those accused of domestic offenses and those found guilty of crimes in our Criminal Court.

There has been no change in the law or the policy of the office during the past year. We have urged upon the judges the necessity for an investigation in each case, prior to probation, so that they would know the three important things before granting defendants the benefit of the law: First, the man's residence and his home surroundings; second, his work record; and third, his criminal record, if any. In support of that theory we made an investigation of all the cases, except those on probation, from the Domestic Relations' branch of the Municipal Court, which were discharged during the last fiscal year.

The total number of investigated cases show only 12 per cent discharged unsatisfactory, but those not investigated show 27 per cent unsatisfactory. To a student of probation, the details are interesting.

During the past year we have had quite a large number of cases from the Domestic Relations' Court and comparatively few cases from the Morals' Court of Chicago—366 cases placed on probation by Judge Dolan were nearly all admitted to probation while he was presiding in the Boys' Courts—Judge Fisher (389 cases) were admitted practically all of them while he was presiding in the Morals' Court. Judge Stelk (709 cases) were substantially all of them admitted while he was presiding in the Court of Domestic Relations.

The success of the Domestic Court is in a large measure due to the judge's firmness in insisting upon his orders being carried out, to the work of the court attaches, and the persistent work of the probation officers in forcing the defendants to pay their wives the amount ordered by the court. If the probation officers did not keep after these men, there would be a large deficit in the amount received by their wives and children.

As I have said many times before, they are the worst cases we have to handle and require three or four times as much work as any other class admitted to probation.

We believe that the department has been a great help to the wives and children of the "domestic slackers" in Chicago. As I have said before, we only get on probation those cases which others have given up as beyond redemption.

Mrs. McGuire, the social secretary of the court, has said many times that she does not wonder that we have trouble with these men. What with their mental weaknesses, their continual heavy drinking, and their quarrels with their wives and their wives' relatives—their utter selfishness in thinking only of themselves and not of their wives and children, we have a real job to do in order to get results.

We do not claim that we are exceptionally successful, but we do think that, under the conditions, we have done very well—certainly the Domestic Relations' Court would not be of so great value to the community were it not for this department.

There will be found in the statistical part of this report a statement from the officer in the Boys' Court, of conditions found there during the past several months, but not for the whole year.

The total amount in fines paid under the installment plan of the probation

law amounts to \$2,449.50 and costs, \$1,536.96, a large increase over last year.

We had on probation September 30, 1917, 621 more cases than one year ago—a large increase to be cared for by a department not well supplied with help.

The earnings of probationers have increased more than \$737,000.00 over the amount given last year. The restitution obtained has increased more than \$29,000.

The Employment Bureau has, without much difficulty, been able to place everyone who is willing to work. The report of that department will be found elsewhere, but it shows that we secured employment for 1,038 people; not all of them, however, got the positions.

Eighty-seven of the men on probation never went to the place to get the positions—eight women who were on probation never went to the place for work.

Of men *not* on probation—that is, positions obtained for people from other departments of the county government—forty-eight failed to go to get the position—women numbering fourteen failed to go to get the position offered them.

As a matter of fact, 878 people were given jobs.

We have 1,975 investigations for the judges. A good many of the persons investigated were not put on probation, because the judge found from our investigation that the defendant was not either morally or legally entitled to it.

There will also be found on page number 15 a statement as to the men with previous police records, those having been on probation before (in cases other than domestic), and those having been on probation before for non-support, or, as we call them, "domestic repeaters."

In that same table it shows the number of women with police records, admitted to probation, and the number of repeaters.

The department has felt the effect of the war in that we find a large number of those on probation have either enlisted or been drafted. In numerous cases we have to make arrangements with the government for the purpose of having a part of the salary assigned and set off for the benefit of the wife and children, and many of them are now financially better off because of the enlistment of the husband and father than they were before; thanks to the help of the Red Cross!

The male members of the department are none of them young enough to be drafted or to enlist, but quite a number of the officers have contributed their share through their family—seven sons of officers have joined the Army or Navy. The officers and probationers are doing their bit toward helping the Nation win the war.

Some persons have misunderstood our statistics in that they have assumed that all the cases discharged as "unsatisfactory" are those having again violated the law. That is not true. Listed under that head are those who have committed another offense and have been punished—those who have failed to pay the full amount of their restitution—those having left the state without permission, and those having moved without leaving any trace, those having committed slight infractions of the law and, being brought in by the officer, were discharged.

We are glad to state that this last year the courts have been dealing with probationers violating their probations, with more firmness and are insisting

upon the conditions of their probation being carried out. In this way, better results are obtained and a larger percentage of improvement shown.—John W. Houston, Chief Probation Officer.

MISCELLANEOUS

Committees of the Institute—Appointed for 1918 to 1919.—

Committee "A"—Insanity and Criminal Responsibility.

Victor Arnold, Judge of the Juvenile Court, Chicago, Chairman.

Orrin N. Carther, Justice of the Supreme Court of Illinois, Springfield, Illinois.

George A. Patrick, Alienist, Chicago.

Edgar A. Singer, State Psychiatrist, Kankakee, Illinois.

Sidney Kuh, Alienist, Chicago.

Burdette G. Lewis, Commissioner of Charities and Correction, Trenton, New Jersey.

Committee "B"—Probation and Suspended Sentence.

Edith Abbot, School of Civics and Philanthropy, Chicago, Chairman.

A. C. Backus, Judge Municipal Court, Milwaukee, Wisconsin.

Miss Minnie F. Low, 18 Selden Street, Chicago.

Homer Folks, Yonkers, New York.

Joel D. Hunter, United Charities, Chicago.

Maclay Hoyne, Prosecuting Attorney, County Building, Chicago.

John H. Whitman, Superintendent of Prisons, The Capitol, Springfield, Illinois.

Committee "C"—Classification and Definition of Crime.

Ernst Freund, University of Chicago, Chicago, Chairman.

Eugene A. Gilmore, University of Wisconsin, Madison, Wisconsin.

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REVIEWS AND CRITICISMS

SCHOOL TRAINING OF DEFECTIVE CHILDREN. By *Henry H. Goddard*. School Efficiency Series, pp. xx + 97, 1914.

EDUCATION OF DEFECTIVES IN THE PUBLIC SCHOOLS. By *Meta L. Anderson*. School Efficiency Monographs, pp. xvii + 104, 1917. World Book Company.

Dr. Goddard's book consists of his report upon the conditions which he found in the New York City schools at the time of the New York School Inquiry in 1912. In order to make the book of general interest, some amplifications have been more recently added to the original report.

The author discusses the manner of caring for defectives in New York at the time of the inquiry: the character of the work done, schoolrooms and equipment, teachers, and supervision. The whole report bears directly upon the following vital problems: the recognition of children who are incapable of taking their places in the ordinary competition of the world; taking them out of regular school classes and placing them in special classes; and continuing the hold upon these unfortunates not only until they are sixteen years of age "but throughout the rest of their lives, to the end that they shall become not only as harmless as possible, but as useful and happy as they can be made." (xvii.) In working out a solution for these problems, Dr. Goddard shows the wisdom of giving these children an opportunity to learn to help themselves, as contrasted with the lack of wisdom which is shown when school administrators attempt to cater to whims and false sentiments by allowing regular teachers to attempt to care for defectives in regular school classes.

These general principles receive further amplification in Miss Anderson's work. That is, this author holds that mental defectives should not be excluded from schools, nor included in the regular classes of the school, but that they should receive specific training for such activities as their mental endowments indicate that they may profitably pursue. A sufficient amount of detail is given as to the education of defectives in Newark, N. J., to show clearly the method of selecting defectives, the curriculum of the special school for them, and the organization of their instruction.

The opinion expressed in Dr. Goddard's illuminating introduction that this book sounds the keynote for the training of defectives may be applied to both of the books under review. The treatment of a public school problem, which is also a problem of all who deal with delinquents, is here given in a non-technical, concrete form. Both books should receive the consideration of all who prescribe work for or give instruction to defectives.

Northwestern University.

W. L. UHL.

THE AUTONOMIC FUNCTIONS AND THE PERSONALITY. By Dr. Edward J. Kempf. New York and Washington: Nervous and Mental Disease Publishing Company. Nervous and Mental Disease Monograph Series No. 28. Pp. 156, xiv. \$2.00 net.

The primary object of this monograph, according to the author, is to obtain recognition for the fact that "*in the higher organisms an effective sensori-motor system (autonomic) exists which creates and uses the cerebro-spinal or projicient sensori-motor system as a means to keep in contact with the environment in order that the autonomic apparatus may fulfill its biological career*" (p. xiii). The projicient sensori-motor system has its seat in "the entire cerebro-spinal apparatus." The affective "sensori-motor system" includes the entire autonomic apparatus. Of these two systems the autonomic is the more primitive, and biologically speaking, the more vital. With reference to it the cerebro-spinal system occupies a secondary place; it is a means whereby the affective will work out its biological salvation.

Dr. Kempf is well aware that his theory is at odds with traditional psychology. To be sure, he is able to find some support for his doctrine from the James-Lange theory of the emotions, and is able to quote several well known psychologists in validation of his contention that the sympathetic system plays an important rôle in the life of feeling and emotion. In general, however, orthodox psychology places the directive forces of the mental life in the cerebrum. But Dr. Kempf finds a strong ally in psychoanalysis. Indeed, in view of the interest which he has taken in the theories of Freud and his followers, it is not improbable that the physiological hypothesis is fathered by psychoanalytic reflection.

Dr. Kempf's theory cannot be better stated than in his own words. "The theory advanced is that *whenever the autonomic or affective sensori-motor apparatus is disturbed or forced into a state of unrest, either through the necessities of metabolism, or endogenous, or exogenous stimuli, it compels the projicient sensori-motor apparatus to so adjust the receptors to the environment as to acquire stimuli having the capacity to produce adequate postural readjustments in the autonomic apparatus. In this manner, only, the disturbance of function may be neutralized. The constant tendency of the autonomic apparatus it to so organize the projicient apparatus into a means as to acquire a maximum of affective gratification with a minimum expenditure of energy or effort*" (p. 1).

It would be useless to attempt a serious criticism of Dr. Kempf's theory. The whole movement which he represents is so undeveloped at this date, so lacking in definite form, that criticism, especially of an unfavorable sort, would be premature. The author deals, of course, in important matters, and betrays considerable courage, as well as ability in his undertaking. His language is perhaps unnecessarily technical at times, and the argument is not well organized. But these are trivial objections. The issues raised are important and interesting. If the autonomic system and its mental correlate, the affective experience, are to be given the central and biologically primitive place as-

signed to them by Dr. Kempf, there must be a complete revision of psychological theory. It remains to be seen how far biology and physiology will support this new hypothesis, and what success awaits it as a working conception in psychiatry. It is needful that such theories be advanced, and considered, and put to the test.

Northwestern University.

D. T. HOWARD.

THE PAWNS OF FATE by *Paul E. Bowers*. THE CORNHILL COMPANY, BOSTON, 1918. Pp. 210; price \$1.25.

The author of this story has been for a number of years Prison Physician in the State Prison at Michigan City, Indiana. He has been active also as a member of the American Prison Association and the American Association of Clinical Criminologists. The story traces the history of a down-and-out congenital weakling, and especially draws a picture of a high-minded but inexperienced young prosecuting attorney who is put into his office by the powers that be in the hope that he could be managed. He proved, however, to be independent, succeeded in rooting out the sources of evil in his community, to the upsetting of those who placed him in his position. He was finally instrumental in the conviction of the down-and-out degenerate who proved to be a grandson of the aged justice who committed him to an institution for defectives.

The story is well conceived and it will accomplish good results if it can be got into the right hands.

Northwestern University.

ROBERT H. GAULT.

CRIMINOLOGY. By *Maurice Parmelee*, New York; the MacMillan Company, 1918. Pp. 522. Price \$2.

In this volume Professor Parmelee undertakes a review of the world's best literature in the field of Criminology from every angle. It is inevitable that the carrying out of such a program within the scope of 500 odd pages should entail a certain skimpiness in many particulars. It is very difficult, also, in view of these circumstances, to avoid an appearance of dogmatism again and again, when a writer comes upon a debatable field. The author has not avoided this appearance in the volume under review. The preparation of this work has entailed an immense amount of labor. On the whole it is creditably done and it will undoubtedly go a long way toward assisting teachers in colleges and universities who desire to acquaint their students with what is being done in our generation in the field of Criminology. Books of this sort will be of increasing value, not only to the general college student, but also to the students of law. Slowly, but surely, this kind of work will reflect upon the future members of the bar with the result that we will have in the future a socialized bar. In view of the pioneer character of this work of Professor Parmelee's, it would be ungracious to indulge carping criticism upon his treatment of certain ever debatable questions, as some reviewers seem inclined to do.

Northwestern University,

ROBERT H. GAULT.

THE IMPRISONED FREEMAN. By *Helen S. Woodruff*. George Sully & Co., Publishers. New York. 12 mo., cloth, net \$1.35.

This volume, in fiction form, gives a striking portrayal of prison abuses under the surviving system of the past, from which the present is beginning to emerge.

With very little of the emotionalism and exaggeration sometimes attending the writing of fiction, the author appears to have an intelligent and up-to-date grasp of the weaknesses of the system, and the possibilities of the better way.

The essential hypocrisy of society's attitude toward the offender is vividly pictured. Even the hereditary and social factors in crime, both in their material and psychological import, are set forth convincingly. The conflict of emotions, resulting from the differing characteristics of Father and Mother, are shown to account for the contradictory manifestations of both good and evil impulses in every man behind the bars.

Lombroso's theory of a criminal class, and its well known exposure by Dr. Chas. Goring is brought out. The opposite doctrine is preached, viz., that "all criminals are possible men, and all men possible criminals."

The darkness, dirt and deadly monotony so characteristic of the prison of the older type, as the writer vividly describes it, does not differ widely from what may still be found in some parts of the United States in 1919.

The tendency to tyranny on the part of prison officials is strikingly accounted for. The fact itself is not new, since the experienced observer finds few men who are able to be prison keepers for a long period without becoming brutal or indifferent to the feelings of their wards.

In stating that this must be true in the nature of the situation, the author makes the suggestive claim that where one man is given arbitrary power over another man *without spirituality*, then tyranny and brutality is bound to develop.

This suggestion will cause the reader to wonder how long it will be before society or the state requires "spirituality," as one of the essential qualifications of prison wardens and guards.

The possibilities in this direction are brought out in the story of THE IMPRISONED FREEMAN. A judge with a conscience is impelled to learn by inside information just what is going on in the place he has been sending men for twenty-five years. As Prison Commissioner he insists upon becoming a prisoner for two weeks. In less than two days, however, he learns a plenty to condemn the system, with its personal corruption and political intrigue. With this knowledge he goes out to arouse the public and start a movement for sin-sick men. With his own money, some additional funds and a state appropriation, such an institution is built and in operation within a year, with the Judge in charge as Warden, and a similarly benevolently-minded physician in charge of the hospital, and psychopathic laboratory.

The men were classified according to their condition, and treated as men. Trades are taught and a co-operative farm operated. All working inmates are paid a living wage, to retrieve their wrong, and prepare for a new start, as well as to care for their families and the future of their children.

In short, the problem as seen by an intelligent life prisoner, is given in the following statement, which furnished the inspiration for the new prison and expresses the spirit of the story under review :

"Criminals are men morally sick. Help them to help themselves. Warsaw prison and others like it are hives of revenge, breeders of crime and are places of and for lost souls. Make your new prisons hospitals and vocational and industrial schools, with a governing spirit of moral inspiration dominating the administration.

"When all this is done and your government faces the prison problem from the angle of pity and a desire to make and not unmake future citizens, it will be approaching the question through reason and not prejudice, through love and not hate. Until this is done and the state ceases to punish crime by itself committing essential crimes, civilization cannot make any appreciable move upward."

The book is well worth reading.

Central Howard Association, Chicago.

F. EMORY LYON.

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